

**ALTERNATIVE TO 2019 SENATE BILL 683  
Proposed by Warren Deras**

**SUMMARY**

The following summary is prepared by the proponent of the measure as a brief statement of the essential features of the measure and is not a part of the body thereof subject to consideration.

Requires guardian to consult with and inform protected person regarding significant decisions, clarifies procedures for resolving objections by protected person to decisions or other actions of a fiduciary, reduces court fee for requesting notice in protective proceedings.

**A BILL FOR AN ACT**

1  
2 Relating to guardianships; creating new provisions; and amending ORS 125.060, 125.075, 125.085, 125.300, and  
3 125.325.

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

5 **SECTION 1. Section 2 of this 2019 Act is added to and made a part of ORS chapter 125.**

6 **SECTION 2. (1) Except as ordered by the court, a guardian for an adult protected person shall to the extent  
7 practicable and reasonable:**

8 (a) **Consult with the protected person in making significant decisions respecting the protected person;**

9 (b) **Upon making a significant decision respecting the protected person inform the protected person of the  
10 decision; and**

11 (c) **Become or remain personally acquainted with the protected person and maintain sufficient contact with  
12 the protected person, including through regular visitation, to know the protected person's abilities, limitations,  
13 needs, opportunities and physical and mental health.**

14 (2) **In determining the manner and extent to which it is practicable to consult with or inform a protected  
15 person under this section a guardian may consider:**

16 (a) **The extent to which the protected person can receive and understand the information, but the guardian  
17 is not excused from consulting with or giving notice to the protected person solely for the reason that the guardian  
18 expects that the protected person will unreasonably disagree with the guardian's decision;**

19 (b) **The existence of urgent circumstances requiring that the decision be made and implemented promptly;  
20 and**

21 (c) **Such other factors as the guardian considers reasonable in the circumstances.**

22 **SECTION 3. ORS 125.060 is amended to read:**

23 125.060(1) The notices required by this section must be given to all persons whose identities and addresses can be  
24 ascertained in the exercise of reasonable diligence by the person required to give the notice.

25 (2) Notice of the filing of a petition for the appointment of a fiduciary or entry of other protective order must be  
26 given by the petitioner to the following persons:

27 (a) The respondent, if the respondent has attained 14 years of age.

28 (b) The spouse, parents and adult children of the respondent.

29 (c) If the respondent does not have a spouse, parent or adult child, the person or persons most closely related to the  
30 respondent.

31 (d) Any person who is cohabiting with the respondent and who is interested in the affairs or welfare of the  
32 respondent.

33 (e) Any person who has been nominated as fiduciary or appointed to act as fiduciary for the respondent by a court

**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 of any state, any trustee for a trust established by or for the respondent, any person appointed as a health care  
2 representative under the provisions of ORS 127.505 to 127.660 and any person acting as attorney-in-fact for the  
3 respondent under a power of attorney.

4 (f) If the respondent is a minor, the person who has exercised principal responsibility for the care and custody of  
5 the respondent during the 60-day period before the filing of the petition.

6 (g) If the respondent is a minor and has no living parents, any person nominated to act as fiduciary for the minor in  
7 a will or other written instrument prepared by a parent of the minor.

8 (h) If the respondent is receiving moneys paid or payable by the United States through the Department of Veterans  
9 Affairs, a representative of the United States Department of Veterans Affairs regional office that has responsibility for  
10 the payments to the protected person.

11 (i) If the respondent is receiving moneys paid or payable for public assistance provided under ORS chapter 411 by  
12 the State of Oregon through the Department of Human Services, a representative of the department.

13 (j) If the respondent is receiving moneys paid or payable for medical assistance provided under ORS chapter 414  
14 by the State of Oregon through the Oregon Health Authority, a representative of the authority.

15 (k) If the respondent is committed to the legal and physical custody of the Department of Corrections, the Attorney  
16 General and the superintendent or other officer in charge of the facility in which the respondent is confined.

17 (L) If the respondent is a foreign national, the consulate for the respondent's country.

18 (m) Any other person that the court requires.

19 (3) Notice of a motion for the termination of the protective proceedings, for removal of a fiduciary, for modification  
20 of the powers or authority of a fiduciary, for approval of a fiduciary's actions or for protective orders in addition to those  
21 sought in the petition must be given by the person making the motion to the following persons:

22 (a) The protected person, if the protected person has attained 14 years of age.

23 (b) Any person who has filed a request for notice in the proceedings.

24 (c) Except for a fiduciary who is making a motion, any fiduciary who has been appointed for the protected person.

25 (d) If the protected person is receiving moneys paid or payable by the United States through the Department of  
26 Veterans Affairs, a representative of the United States Department of Veterans Affairs regional office that has  
27 responsibility for the payments to the protected person.

28 (e) If the protected person is committed to the legal and physical custody of the Department of Corrections, the  
29 Attorney General and the superintendent or other officer in charge of the facility in which the protected person is  
30 confined.

31 (f) Any other person that the court requires.

32 (4) A request for notice under subsection (3)(b) of this section must be in writing and include the name, address and  
33 phone number of the person requesting notice. A copy of the request must be mailed by the person making the request  
34 to the petitioner or to the fiduciary if a fiduciary has been appointed. The original request must be filed with the court.  
35 The person filing the request must pay the fee specified by ORS [21.135] **21.145**.

36 (5) A person who files a request for notice in the proceedings in the manner provided by subsection (4) of this  
37 section is entitled to receive notice from the fiduciary of any motion specified in subsection (3) of this section and of any  
38 other matter to which a person listed in subsection (2) of this section is entitled to receive notice under a specific  
39 provision of this chapter.

40 (6) If the Department of Human Services is nominated as guardian for the purpose of consenting to the adoption of  
41 a minor, the notice provided for in this section must also be given to the minor's brothers, sisters, aunts, uncles and  
42 grandparents.

43 (7) In addition to the requirements of subsection (2) of this section, notice of the filing of a petition for the

1 appointment of a guardian for a person who is alleged to be incapacitated must be given by the petitioner to the following  
2 persons:

3 (a) Any attorney who is representing the respondent in any capacity.

4 (b) If the respondent is a resident of a nursing home or residential facility, or if the person nominated to act as  
5 fiduciary intends to place the respondent in a nursing home or residential facility, the office of the Long Term Care  
6 Ombudsman.

7 (c) If the respondent is a resident of a mental health treatment facility or a residential facility for individuals with  
8 developmental disabilities, or if the person nominated to act as fiduciary intends to place the respondent in such a facility,  
9 the system described in ORS 192.517 (1).

10 (8) In addition to the requirements of subsection (3) of this section, in a protective proceeding in which a guardian  
11 has been appointed, notice of the motions specified in subsection (3) of this section, and the address, telephone number  
12 and other contact information of the protected person, must be given by the person making the motion to the following  
13 persons:

14 (a) Any attorney who represented the protected person at any time during the protective proceeding.

15 (b) If the protected person is a resident of a nursing home or residential facility, or if the motion seeks authority to  
16 place the protected person in a nursing home or residential facility, the office of the Long Term Care Ombudsman.

17 (c) If the protected person is a resident of a mental health treatment facility or a residential facility for individuals  
18 with developmental disabilities, or if the motion seeks authority to place the protected person in such a facility, the  
19 system described in ORS 192.517 (1).

20 (9) A respondent or protected person may not waive the notice required under this section.

21 (10) The requirement that notice be served on an attorney for a respondent or protected person under subsection  
22 (7)(a) or (8)(a) of this section does not impose any responsibility on the attorney receiving the notice to represent the  
23 respondent or protected person in the protective proceeding.

24 **SECTION 4.** ORS 125.075 is amended to read:

25 125.075. (1) Any person who is interested in the affairs or welfare of a respondent or protected person may present  
26 objections to a petition or to a motion in a protective proceeding, including but not limited to:

27 (a) Any person entitled to receive notice under ORS 125.060.

28 (b) Any stepparent or stepchild of the respondent or protected person.

29 (c) Any other person the court may allow.

30 (2) Objections to a petition may be either written or oral. Objections to a motion must be in writing, except that a  
31 protected person may object orally in person or by other means that are intended to convey the protected person's  
32 objections to the court. Objections to a petition or to a motion must be made or filed with the court within 15 days after  
33 notice of the petition or motion is served or mailed in the manner prescribed by ORS 125.065. The court shall designate  
34 the manner in which oral objections may be made that ensures that a protected person will have the protected person's  
35 objection presented to the court. The clerk of the court shall provide a means of reducing the oral objections to a signed  
36 writing for the purpose of filing the objection.

37 (3) If objections are presented by any of the persons listed in subsection (1) of this section, the court shall schedule  
38 a hearing on the objections. The petitioner or person making the motion shall give notice to all persons entitled to notice  
39 under ORS 125.060 (3) of the date, time and place of the scheduled hearing at least 15 days before the date set for  
40 hearing. Notice shall be given in the manner prescribed by ORS 125.065.

41 (4) Notwithstanding ORS [21.170] 21.175, the court may not charge or collect any fee for the filing of objections  
42 under the provisions of this section or for the filing of any motion from any of the following:

43 (a) The respondent or the protected person;

1 (b) The office of the Long Term Care Ombudsman; or

2 (c) The system described in ORS 192.517 (1).

3 (5) The court for good cause shown may provide for a different method or time of giving notice under subsection  
4 (3) of this section.

5 **SECTION 5.** ORS 125.085 is amended to read:

6 125.085. (1) The court may remove a fiduciary on the motion of any person who is entitled to file an objection to  
7 a petition under the provisions of ORS 125.075, on a motion of the Long Term Care Ombudsman or upon the court's  
8 own motion.

9 (2) On motion of the fiduciary, the court may accept the resignation of the fiduciary and make any other order that  
10 may be appropriate, including appointment of a successor fiduciary.

11 (3) Upon motion by any person who is entitled to file an objection to a petition under the provisions of ORS  
12 125.075, on a motion of the Long Term Care Ombudsman or upon the court's own motion, the court may order a  
13 modification of the powers or authority of the fiduciary or termination of the protective proceedings.

14 **(4) A protected person may object in writing or orally to a decision or other action of the fiduciary in the  
15 same manner as the protected person may object to a motion under ORS 125.075(2). The court shall notify the  
16 fiduciary in writing of the protected person's objection. The fiduciary shall give notice of the objection to the  
17 persons specified by ORS 125.075(3) in the same manner as if the objection were a motion by the protected person  
18 for disapproval of the fiduciary's decision or other action. If no objections are filed the court shall enter an order  
19 on the protected person's motion as appropriate. If objections are filed the court shall schedule a hearing on the  
20 objections, and the fiduciary shall give notice of the hearing to the persons and in the manner provided in ORS  
21 125.075(3).**

22 ~~[(4)]~~ (5) (a) When the Long Term Care Ombudsman files a motion under this section, the ombudsman shall disclose  
23 to the court only:

24 (A) Such information as is allowed under ORS 441.407; and

25 (B) The minimum amount of protected information about the resident who is the subject of the motion that the  
26 ombudsman believes in good faith is reasonably necessary to prevent or lessen a serious and imminent threat to the health  
27 or safety of a resident of a long term care facility, residential facility or adult foster home.

28 (b) Any protected information disclosed by the ombudsman under this subsection shall remain confidential and must  
29 be identified and marked by the ombudsman as confidential and protected information that is subject to the requirements  
30 of this subsection.

31 (c) Protected information disclosed under this subsection is subject to inspection only by the parties to the  
32 proceeding and their attorneys as provided in paragraph (d) of this subsection. Protected information disclosed under  
33 this subsection is not subject to inspection by members of the public except pursuant to a court order entered after a  
34 showing of good cause.

35 (d) The court may enter an order allowing inspection of protected information subject to disclosure under this  
36 subsection upon the filing of a written request for inspection and the payment of any fees or costs charged to copy the  
37 protected information.

38 (e) Notwithstanding ORS 125.155 (4), to the extent that the report of a visitor appointed by the court under ORS  
39 125.150 contains protected information that is subject to the requirements of this subsection, the report in its entirety shall  
40 be considered subject to the requirements of this subsection and may be disclosed only as provided in paragraphs (c) and  
41 (d) of this subsection.

42 **SECTION 6.** ORS 125.300 is amended to read:

43 125.300. (1) A guardian may be appointed for an adult person only as is necessary to promote and protect the well-

1 being of the protected person. A guardianship for an adult person must be designed to encourage the development of  
2 maximum self-reliance and independence of the protected person and may be ordered only to the extent necessitated by  
3 the person's actual mental and physical limitations.

4 (2) An adult protected person for whom a guardian has been appointed is not presumed to be incompetent.

5 (3) A protected person retains all legal and civil rights provided by law except those that have been expressly limited  
6 by court order, [or] those specifically granted to the guardian by the court, or those granted to the guardian by ORS  
7 125.315 and not expressly limited by court order. Rights retained by the person include but are not limited to the right  
8 to contact and retain counsel and to have access to personal records.

9 **SECTION 7.** ORS 125.325 is amended to read:

10 125.325. Within 30 days after each anniversary of appointment, a guardian for an adult protected person shall file  
11 with the court a written report. The report must include a declaration under penalty of perjury in the form required by  
12 ORCP 1 E, or an unsworn declaration under ORS 194.800 to 194.835, if the declarant is physically outside the  
13 boundaries of the United States. Copies of the guardian's report must be given to those persons specified in ORS 125.060  
14 (3). The report shall be in substantially the following form:

15 \_\_\_\_\_  
16 IN THE \_\_\_\_\_ COURT \_\_\_\_\_ COUNTY,  
17 STATE OF OREGON  
18 DEPARTMENT OF PROBATE

19 In the Matter of the ) No. \_\_\_\_\_  
20 Guardianship of )  
21 \_\_\_\_\_, )  
22 (Name of protected )  
23 person) )  
24 A Protected )  
25 Person. )

26 **GUARDIAN'S REPORT**

27 I am the guardian for the person named above, and I make the following report to the court as required by law:

28 1. My name is \_\_\_\_\_.

29 2. My address and telephone number are:

30 \_\_\_\_\_

31 \_\_\_\_\_

32 Phone \_\_\_\_\_

33 3. The name, if applicable, and address of the place where the person now resides are:

34 \_\_\_\_\_

35 \_\_\_\_\_

36 4. The person is currently residing at the following type of facility or residence:

37 \_\_\_\_\_

38 5. The person is currently engaged in the following programs and activities and receiving the following services  
39 (brief description):

40 \_\_\_\_\_

41 6. I was paid for providing the following items of lodging, food or other services to the person:

42 \_\_\_\_\_

43 \_\_\_\_\_

1 7. The name of the person primarily responsible for the care of the person at the person's place of residence is:

2 \_\_\_\_\_

3 8. The name and address of any hospital or other institution where the person is now admitted on a temporary or  
4 permanent basis are:

5 \_\_\_\_\_

6 \_\_\_\_\_

7 9. The person's physical condition is as follows (brief description):

8 \_\_\_\_\_

9 \_\_\_\_\_

10 10. The person's mental condition is as follows (brief description):

11 \_\_\_\_\_

12 \_\_\_\_\_

13 11. Facts that support the conclusion that the person is incapacitated include the following:

14 \_\_\_\_\_

15 12. I made the following contacts with the person during the past year (brief description):

16 \_\_\_\_\_

17 13. I made the following major decisions on behalf of the person during the past year (brief description):

18 \_\_\_\_\_

19 **I acknowledge that in making significant decisions on behalf of the person I am required by law to consult with**  
20 **and inform the person regarding those decisions to the extent practicable and reasonable under the**  
21 **circumstances.**

22 14. I believe the guardianship should or should not continue because:

23 \_\_\_\_\_

24 15. At the time of my last report, I held the following amount of money on behalf of the person: \$ \_\_\_\_\_. Since  
25 my last report, I received the following amount of money on behalf of the person: \$ \_\_\_\_\_. I spent the following amount  
26 of money on behalf of the person: \$ \_\_\_\_\_. I now hold the following amount of money on behalf of the person: \$ \_\_\_\_\_.

27 16. A true copy of this report will be given to the person, any conservator for the person, and any other person who  
28 has requested notice.

29 17. Since my last report:

30 (a) I have been convicted of the following crimes (not including traffic violations):

31 \_\_\_\_\_

32 (b) I have filed for or received protection from creditors under the Federal Bankruptcy Code (yes or no): \_\_\_\_\_.

33 (c) I have had a professional or occupational license revoked or suspended (yes or no): \_\_\_\_\_.

34 (d) I have had my driver license revoked or suspended (yes or no): \_\_\_\_\_.

35 18. Since my last report, I have delegated the following powers over the protected person for the following periods  
36 of time (provide name of person powers delegated to):

37 \_\_\_\_\_

38 I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is  
39 made for use as evidence in court and is subject to penalty for perjury.

40 Dated this \_\_\_ day of \_\_\_\_\_, 2\_\_\_.

41 \_\_\_\_\_

42 Guardian

43 **NOTICE: ALL GUARDIANS ARE SUBJECT TO COURT SUPERVISION. THE PROTECTED PERSON**

1 **OR ANY OTHER PERSON INTERESTED IN THE AFFAIRS OR WELFARE OF THE PROTECTED PERSON**  
2 **WHO IS THE SUBJECT OF THIS REPORT WHO HAS CONCERNS ABOUT THIS REPORT OR THE**  
3 **GUARDIAN’S PERFORMANCE MAY CONTACT THE COURT IN WRITING AS FOLLOWS:**

4 \_\_\_\_\_  
5 \_\_\_\_\_  
6 \_\_\_\_\_  
7 \_\_\_\_\_  
8 \_\_\_\_\_

9 **IN ADDITION THE PROTECTED PERSON MAY CONTACT THE COURT ORALLY AS FOLLOWS:**

10 \_\_\_\_\_  
11 \_\_\_\_\_  
12 \_\_\_\_\_  
13 \_\_\_\_\_  
14 \_\_\_\_\_

15 **IF THE PROTECTED PERSON INFORMS THE COURT OF ANY OBJECTIONS TO DECISIONS OR**  
16 **ACTIONS OF THE GUARDIAN, A HEARING WILL BE SCHEDULED. NO FEE WILL BE CHARGED TO**  
17 **THE PROTECTED PERSON FOR THE FILING OF OBJECTIONS.**