

Example 2:

Questions to Ask in
Formulating a
Fiscal Impact Statement

House Bill 2438

Sponsored by Representatives BAILEY, DOHERTY, SPRENGER; Representatives BARKER, BUCKLEY, DEMBROW, FREDERICK, READ (Pre-session filed.)

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 as introduced.

Directs school district board to adopt policy related to teen dating violence.

Directs Department of Justice to use moneys in Oregon Domestic and Sexual Violence Services Fund to provide state and local services related to teen dating violence and to conduct study related to teen dating violence.

Allows Director of Human Services to make grants for prevention, identification and treatment related to teen dating violence.

Directs Director of Human Services to conduct survey of teens related to teen dating violence.

Requires collection of fee at time of filing of petition for marital annulment, dissolution or separation to be paid into Teen Dating Violence Prevention Account and Teen Dating Violence Services Account.

Establishes Teen Dating Violence Prevention Account and Teen Dating Violence Services Account. Continuously appropriates moneys in accounts to fund teen dating violence services.

A BILL FOR AN ACT

Relating to violence involving teens; creating new provisions; amending ORS ~~21.111~~, 147.450, 147.453, 409.290, 409.292 and 409.296; appropriating money; and ~~providing for revenue raising that requires approval by a three-fifths majority.~~ *limiting expenditures; and declaring an emergency.*

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

SECTION 1. (1) As used in this section, "teen dating violence" means a pattern of behavior in which a person uses or threatens to use physical, mental or emotional abuse to control another person who is in a dating relationship with the person, where one or both persons are 13 to 19 years of age.

(2) Each school district board shall adopt a policy that:

(a) States that teen dating violence is unacceptable and will not be tolerated;

(b) Incorporates age-appropriate education about teen dating violence in the curriculum of students in grades 7 to 12;

(c) Establishes procedures for the manner in which employees of a school are to respond to, investigate and impose discipline and make reports related to any incidents of teen dating violence that take place at the school, on school grounds, at school-sponsored activities, on school-provided transportation or at any official school bus stop;

(d) Identifies by job title the school officials responsible for receiving reports related to teen dating violence and available to address concerns regarding relationships that may have the potential for resulting in teen dating violence; and

(e) Notifies students and parents of the teen dating violence policy adopted by the board.

SECTION 2. ORS 147.450 is amended to read:

147.450. As used in ORS 147.450 to 147.471:

(1) "Domestic violence" has the meaning given that term in ORS 135.230, and includes teen dating violence. *and*

Insert - 2 Amendment

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.

**PROPOSED AMENDMENTS TO
HOUSE BILL 2438**

- 1 On page 1 of the printed bill, line 2, delete "21.111,".
- 2 In line 3, after the second semicolon delete the rest of the line and line
3 4 and insert "limiting expenditures; and declaring an emergency.".
- 4 Delete lines 6 through 25 and delete pages 2 through 6 and insert:
- 5 **"SECTION 1. (1) As used in this section:**
- 6 **"(a) 'Dating' or 'dating relationship' means an ongoing social re-**
7 **lationship of a romantic or intimate nature between two persons.**
- 8 **"(b) 'Teen dating violence' means:**
- 9 **"(A) A pattern of behavior in which a person uses or threatens to**
10 **use physical, mental or emotional abuse to control another person who**
11 **is in a dating relationship with the person, where one or both persons**
12 **are 13 to 19 years of age; or**
- 13 **"(B) Behavior by which a person uses or threatens to use sexual**
14 **violence against another person who is in a dating relationship with**
15 **the person, where one or both persons are 13 to 19 years of age.**
- 16 **"(2) Each school district board shall adopt a policy that:**
- 17 **"(a) States that teen dating violence is unacceptable and is prohib-**
18 **ited and that each student has the right to a safe learning environ-**
19 **ment;**
- 20 **"(b) Incorporates age-appropriate education about teen dating vi-**
21 **olence into existing training programs for students in grades 7 through**
22 **12 and school employees;**

1 “(c) Establishes procedures for the manner in which employees of
2 a school are to respond to, investigate and impose discipline and make
3 reports related to any incidents of teen dating violence that take place
4 at the school, on school grounds, at school-sponsored activities or in
5 vehicles used for school-provided transportation;

6 “(d) Identifies by job title the school officials who are responsible
7 for receiving reports related to teen dating violence and are available
8 to address concerns regarding relationships that may result in teen
9 dating violence, which shall be the same school officials identified in
10 the policy adopted by a school district under ORS 339.356; and

11 “(e) Notifies students and parents of the teen dating violence policy
12 adopted by the board.

13 “(3) The policy adopted under subsection (2) of this section must
14 be included in and consistent with the policy adopted by a school dis-
15 trict under ORS 339.356.

16 “SECTION 2. ORS 147.450 is amended to read:

17 “147.450. As used in ORS 147.450 to 147.471:

18 “(1) ‘Domestic violence’ has the meaning given that term in ORS 135.230
19 and includes teen dating violence.[; and]

20 “(2) ‘Sexual assault’ means any unwanted sexual contact as defined in
21 ORS 163.305.

22 “(3) ‘Teen dating violence’ means:

23 “(a) A pattern of behavior in which a person uses or threatens to
24 use physical, mental or emotional abuse to control another person who
25 is in a dating relationship with the person, where one or both persons
26 are 13 to 19 years of age; or

27 “(b) Behavior by which a person uses or threatens to use sexual
28 violence against another person who is in a dating relationship with
29 the person, where one or both persons are 13 to 19 years of age.

30 “SECTION 3. ORS 147.453 is amended to read:

1 "147.453. There is established in the State Treasury, separate and distinct
2 from the General Fund, the Oregon Domestic and Sexual Violence Services
3 Fund. All moneys in the fund are continuously appropriated to the Depart-
4 ment of Justice and shall be used by the department to carry out a program
5 of domestic and sexual violence services that:

6 "(1) Provides safety for and assists victims of domestic violence and sex-
7 ual assault, promotes effective intervention and reduces the incidence of do-
8 mestic violence and sexual assault;

9 "(2) Advocates for victims and for domestic violence and sexual assault
10 services; [*and*]

11 "(3) Promotes and facilitates interagency and interdepartmental cooper-
12 ation among state agencies, including the Department of Human Services,
13 and among different levels of government in this state in the delivery and
14 funding of services[.]; **and**

15 **"(4) Encourages and supports services, programs and curricula to**
16 **educate and inform students in grades 7 through 12 about teen dating**
17 **violence, to provide assistance to victims of teen dating violence and**
18 **to prevent and reduce the incidence of teen dating violence.**

19 **"SECTION 4. (1) Subject to section 11 of this 2011 Act, the Oregon**
20 **Health Authority, in consultation with the Director of Human Ser-**
21 **vices, shall conduct a longitudinal study of dating violence among**
22 **students in grades 7 through 12. The study shall compile information**
23 **and data about the incidence of teen dating violence and the existence**
24 **and effectiveness of teen dating violence services and programs for**
25 **teens in Oregon.**

26 **"(2) The study described in subsection (1) of this section shall use**
27 **evidence-based practice methodology and shall maintain the**
28 **confidentiality of victims of teen dating violence.**

29 **"(3) Following completion of the study described in subsection (1)**
30 **of this section, the Director of the Oregon Health Authority and the**

1 **Director of Human Services shall prepare a report containing the fol-**
2 **lowing:**

3 **“(a) The findings, conclusions and recommendations regarding the**
4 **incidence of teen dating violence;**

5 **“(b) A description of services available for victims of teen dating**
6 **violence and an explanation of the need for those services and any**
7 **additional services; and**

8 **“(c) Any other recommendations for prevention or reduction of teen**
9 **dating violence in this state.**

10 **“(4) The report prepared under subsection (3) of this section shall**
11 **be presented to the committees of the Legislative Assembly with au-**
12 **thority over the subject areas of education and domestic violence on**
13 **the date of the convening of the next regular session of the Legislative**
14 **Assembly following completion of the study.**

15 **“SECTION 5. ORS 409.290 is amended to read:**

16 **“409.290. As used in ORS 409.290 to 409.300, unless the context requires**
17 **otherwise:**

18 **“(1) ‘Crisis line’ means an emergency telephone service staffed by persons**
19 **who are trained to provide emergency peer counseling, information, referral**
20 **and advocacy to victims of [*domestic*] **family or teen dating** violence and**
21 **their families.**

22 **“(2) ‘Director’ means the Director of Human Services.**

23 **“(3) ‘Family violence’ means the physical injury, sexual abuse or forced**
24 **imprisonment, or threat thereof, of a person by another who is related by**
25 **blood, marriage or intimate cohabitation at the present or has been related**
26 **at some time in the past, to the extent that the person’s health or welfare**
27 **is harmed or threatened thereby, as determined in accordance with rules**
28 **prescribed by the director.**

29 **“(4) ‘Safe house’ means a place of temporary refuge, offered on an ‘as**
30 **needed’ basis to victims of [*domestic*] **family** violence and their families.**

1 “(5) ‘Shelter home’ means a place of temporary refuge, offered on a
2 24-hour, seven-day per week basis to victims of [*domestic*] **family violence**
3 and their children.

4 “(6) ‘Teen dating violence’ means:

5 “(a) A pattern of behavior in which a person uses or threatens to
6 use physical, mental or emotional abuse to control another person who
7 is in a dating relationship with the person, where one or both persons
8 are 13 to 19 years of age; or

9 “(b) Behavior by which a person uses or threatens to use sexual
10 violence against another person who is in a dating relationship with
11 the person, where one or both persons are 13 to 19 years of age.

12 “SECTION 6. ORS 409.292 is amended to read:

13 “409.292. (1) The Director of Human Services may make grants to and
14 enter into contracts with nonprofit private organizations or public agencies
15 for programs and projects designed to prevent, identify and treat family **and**
16 **teen dating** violence. Grants or contracts under this subsection may be:

17 “(a) For the funding of shelter homes for spouses and children who are
18 or have experienced family violence including acquisition and maintenance
19 of shelter homes;

20 “(b) For the funding of crisis lines providing services to victims of [*do-*
21 *mestic*] **family or teen dating** violence and their families;

22 “(c) For the funding of safe houses for victims of [*domestic*] **family vi-**
23 **olence and their families; [and]**

24 “(d) **For the funding of services, programs and curricula to educate**
25 **and inform students in grades 7 through 12 about teen dating violence,**
26 **to provide assistance to victims of teen dating violence and to prevent**
27 **and reduce the incidence of teen dating violence; and**

28 “[(d)] (e) For the development and establishment of programs for profes-
29 sional and paraprofessional personnel in the fields of social work, law
30 enforcement, education, law, medicine and other relevant fields who are en-

1 gaged in the field of the prevention, identification and treatment of family
2 **and teen dating** violence and training programs in methods of preventing
3 family **and teen dating** violence.

4 “(2) The director shall not make a grant to any organization or agency
5 under this section except on the condition that a local governmental unit
6 or community organization provide matching moneys equal to 25 percent of
7 the amount of the grant. The applying organization itself may contribute to
8 or provide the required local matching funds. The value of in kind contri-
9 butions and volunteer labor from the community may be computed and in-
10 cluded as a part of the local matching requirement imposed by this
11 subsection.

12 “(3) Notwithstanding the provisions of ORS 192.001 to 192.170, 192.210 to
13 192.505 and 192.610 to 192.990:

14 “(a) The director may by rule provide that the locations of premises uti-
15 lized for shelter homes or other physical facilities in family violence pro-
16 grams and projects shall be kept confidential.

17 “(b) All information maintained by the shelter home, safe house or crisis
18 line relating to clients is confidential. However, crisis lines specifically
19 funded to provide services for victims of child abuse are subject to the re-
20 quirements of ORS 419B.005 to 419B.050. Except for the names of clients,
21 necessary information may be disclosed to the director.

22 **“SECTION 7.** ORS 409.296 is amended to read:

23 “409.296. (1) A public agency or nonprofit private organization [*operating*
24 *a shelter home or safe house*] may apply to the Director of Human Services
25 for a grant under ORS 409.292. The agency or organization must submit to
26 the director, at the time of application:

27 “(a) A statement of services provided;

28 “(b) Proof of maintenance of accurate and complete financial records;

29 “(c) Assurance of compliance with local building, fire and health codes
30 for existing structures;

1 “(d) Clearly defined written intake and referral policies and procedures;
2 and

3 “(e) If operated by a private organization, a list of members of the gov-
4 erning board.

5 “(2) The director shall approve or reject applications within 60 days after
6 receipt. The director shall mail written notification to the applicant no later
7 than five working days following final action taken on the application.

8 “(3) The director shall consider the geographic area of the state from
9 which an application is submitted to the end that all areas of the state de-
10 velop programs to deal with [*domestic*] **family and teen dating** violence.

11 “**SECTION 8. Section 9 of this 2011 Act is added to and made a part**
12 **of ORS 409.290 to 409.300.**

13 “**SECTION 9. (1) The Director of Human Services shall create or**
14 **include in any existing survey that is regularly conducted of students**
15 **in grades 8 and 11 in this state questions about teen dating violence.**
16 **The questions shall be designed to elicit responses that will assist the**
17 **Department of Human Services to determine, at a minimum:**

18 “(a) **Whether teens in this state are informed about teen dating vi-**
19 **olence and, if they are, how they have been informed about teen dating**
20 **violence;**

21 “(b) **The incidence of teen dating violence;**

22 “(c) **The type of assistance, if any, available to victims of teen dat-**
23 **ing violence;**

24 “(d) **Possible reasons for teen dating violence and suggestions to**
25 **prevent or reduce the incidence of teen dating violence; and**

26 “(e) **The needs of victims of teen dating violence.**

27 “(2) **The Director of Human Services shall share information ob-**
28 **tained from the survey conducted under subsection (1) of this section**
29 **with the Director of the Oregon Health Authority.**

30 “**SECTION 10. (1) Except as provided in subsection (2) of this sec-**

1 tion, the Teen Dating Violence Prevention Study Fund is established
2 in the State Treasury, separate and distinct from the General Fund.
3 The Teen Dating Violence Prevention Study Fund shall consist of
4 contributions of moneys from any source, public or private. Interest
5 earned by the Teen Dating Violence Prevention Study Fund shall be
6 credited to the fund. Moneys in the fund are continuously appropriated
7 to the Oregon Health Authority for the purpose of carrying out section
8 4 of this 2011 Act.

9 “(2) Moneys in the General Fund and federal funds appropriated or
10 otherwise obligated to support other programs of the authority may
11 not be deposited into the Teen Dating Violence Prevention Study
12 Fund.

13 “(3) The authority may accept assistance from any source, public
14 or private, and may agree to conditions placed on the moneys not in-
15 consistent with the provisions of section 4 of this 2011 Act.

16 “SECTION 11. Section 4 of this 2011 Act becomes operative only if,
17 not later than June 30, 2013:

18 “(1) Sufficient moneys are deposited in the Teen Dating Violence
19 Prevention Study Fund established in section 10 of this 2011 Act for
20 the Oregon Health Authority to conduct the study described in section
21 4 of this 2011 Act; and

22 “(2) The authority notifies the Legislative Counsel that sufficient
23 moneys have been deposited in the fund to conduct the study described
24 in section 4 of this 2011 Act.

25 “SECTION 12. (1) Section 10 of this 2011 Act is repealed on July 1,
26 2013, if section 4 of this 2011 Act does not become operative on or be-
27 fore June 30, 2013, as provided in section 11 of this 2011 Act.

28 “(2) Any moneys remaining in the Teen Dating Violence Prevention
29 Study Fund on the date of the repeal of section 10 of this 2011 Act as
30 provided in subsection (1) of this section shall be transferred to the

1 **General Fund.**

2 **“SECTION 13. Notwithstanding any other law limiting expenditures,**
3 **the amount of \$1 is established for the biennium beginning July 1, 2011,**
4 **as the maximum limit for payment of expenses by the Oregon Health**
5 **Authority from the Teen Dating Violence Prevention Study Fund es-**
6 **tablished in section 10 of this 2011 Act.**

7 **“SECTION 14. This 2011 Act being necessary for the immediate**
8 **preservation of the public peace, health and safety, an emergency is**
9 **declared to exist, and this 2011 Act takes effect on its passage.”.**

10

LFO Working Notes for HB 2438-2

SECTION 1 requires each school district board to:

1. Adopt a policy that states that teen dating violence is unacceptable and prohibited;

2. Incorporate age-appropriate education about teen dating violence into existing training programs for students in grades 7 through 12, and for school employees;

Schools may need additional FTEs and resources to handle this responsibility. Sponsor intended this language to be modeled after HB 2599 (2009). However, note HB 2599 (2009) relating to cyberbullying uses different language than this bill. It incorporates cyberbullying into existing harassment, intimidation and bullying statutes. School districts “are encouraged” to incorporate cyberbullying into existing training programs. HB 2438-2 states that “each school district board shall adopt a policy that incorporates...”

In addition, does the bill intend to measure the effectiveness of school district policies and training curriculum/programs using the additional survey questions and the longitudinal study to be conducted by DHS and OHA?. If yes, what will be measured? How will school districts be held accountable? In other words, what are the objectives/desired outcomes of this required age-appropriate education training? Will schools be responsible for increasing awareness / knowledge about teen dating violence or for changing attitudes and behavior?

- *Increase awareness knowledge about dating violence?*
- *Change attitudes that justify/ are conducive to dating violence?*
- *Change behavior – decrease verbal/ physical aggression within a dating relationship?*
- *Increase intention to seek help or resources. Increase use of school based and community intervention programs. Increase treatment for perpetrators and support services for victim?.*
- *Increase peer/by-stander education and willingness to help?*
- *Target audience? Students and entire school community – teachers, staff, parents? In addition to being age-appropriate, training program will need to be culturally-appropriate. For examples, some parents will think it’s inappropriate to discuss dating at all.*

3. Establish procedures for responding to, investigating and disciplining incidents of teen dating violence that take place at school, school grounds, school-sponsored activities, and on school-provided transportation;

In addition to DOJ costs to draft policies and procedures, schools may need additional FTEs and resources to handle this responsibility. Will being held responsible for dating activities open school districts to liability? Are there any existing policies relating to dating? The scope of the bill might require training for every school personnel and volunteer that monitors activities at school, school grounds, school sponsored activities and on school provided transportation.

4. Identify by job title the school officials who are responsible for addressing teen dating violence issues; and

Schools may need additional FTEs and resources to handle this responsibility. The bill intends for school officials who take in reports of teen dating violence to be the same individuals who take in reports of bullying under ORS 339.356. Are any of these positions included in the reduction of assistant principals, school resource officers, behavior specialists, counselors, instructional assistants, human resources workers, student services employees, as well as program budgets to close the budget shortfall? Will schools be able to carry out the provisions of this bill without additional resources, in light of these potential reductions?

5. Notify students and parents of the teen dating violence policy adopted by the school board.

How will students and parents be notified of teen dating violence policy? Student handbook? By mail? By website? Cost of printing and distribution?

SECTION 3 authorizes the use of moneys in the Oregon Domestic and Sexual Violence Services Fund to carryout programs that encourages and support services, programs and curricula to educate and inform students in grades 7 through 12 about teen dating violence, to provide assistance to victims of teen dating violence and to prevent and reduce the incidence of teen dating violence.

According to DOJ, there is no money in this fund.

SECTION 6 directs Department of Human Services (DHS), to:

1. Make grants for the funding of services, programs and curricula to educate and inform students grades 7 through 12 about teen dating violence, to provide assistance to victims of teen dating violence and to prevent and reduce the incidence of teen dating violence. *DHS anticipates this cost to be about \$94,000 per biennium (1 position, 0.50 FTE) to perform grant administration and monitoring responsibilities. What is the current grant budget for this program? How will resources to existing domestic violence prevention/intervention programs be diverted?*
2. Include in existing survey that is regularly conducted of students in grades 8 and 11 in this state questions about teen dating violence. *DHS estimates \$28,000 for contractor cost to revise an existing Oregon Health Teen survey to ensure inclusion of meaningful and valid questions. LFO anticipates that*

this number could increase depending on the kind of data to be collected. See questions below regarding the goal/scope/parameters of data collection.

SECTION 4 directs the Oregon Health Authority (OHA), in consultation with the Department of Human Services (DHS), to:

1. Conduct a longitudinal study of dating violence among students in grades 7 through 12. One preliminary ballpark estimate OHA received = \$480,000 for a six year survey of a cohort of 7th graders who will be followed until they are in 12th grade. The cost of this study would be more if the intent of the bill is to follow six cohorts of 7th, 8th, 9th, 10th, 11th, and 12th graders for a longer period of time. Another estimate received by OHA range between \$114,000 and \$170,000 a year for a longitudinal study. With this estimate, a ten-year study could cost approximately \$1.7 million in total. *Note that the participant pool needs to be large enough to account for the attrition rate of a longitudinal study. Also, note that the cost of the longitudinal study, and the cost for the additional survey questions are really indeterminate until the questions below regarding the intent of the bill are answered: The bill does not provide clear direction for determining the goal and scope of data collection.*

Goal/Scope/Parameters of Data Collection

What is the goal of the longitudinal study? What is the scope? What are the parameters of the study? The bill only state that "the study shall compile information and data about the incidence of teen dating violence and the existence and effectiveness of teen dating violence services and programs for teens in Oregon."

- *Will the study capture data to compare pre-post intervention measures and whether or not these measures affected awareness, knowledge or attitudes? Or will the study collect data to learn whether prevention and intervention programs and services can actually change dating violence behaviors? Will the study capture this data from the victim or perpetrator's perspective?*
- *Frequency – how often will data be captured for this longitudinal study – annually, once every two years, etc.?*
- *On what kind of dating relationships will the study focus? Mutual aggression or sole perpetrator? Will the study take into account and control for gender roles? Heterosexual or same sex relationships? Male-to-female or female-to-male aggression?*
- *Will the study look at teens from grades 7 through 12 as one statistical group or will each grade need to be separated?*
- *Will the study take into consideration and control for cultural, socio-economic or other factors?*
- *Will the study try to capture the risk factors (individual, family, relationship, community, societal, mental health, substance abuse, etc.) that lead to dating violence?*
- *Will the data be collected using a passive self-reporting survey to capture changes in awareness and attitude? Or will the survey data be supported with an active data collection methodology in which trained personnel systematically review domestic violence reporting sources to capture changes in behavior?*

- *Is the study intended to evaluate the effectiveness of school district policies and training programs? If yes, how will DHS, OHA and school districts collaborate?*
- *Does this study need to have uniform standards in order to align with national studies, allowing for benchmarking, comparison and more meaningful analysis?*

2. Following completion of the longitudinal study, OHA is directed to prepare a report containing the findings, conclusions and recommendations to prevent teen dating violence, as well as a description of services available for victims of teen dating violence.

Is the bill's intent that OHA does not need to report a description of services available for victims of teen dating violence until the completion of the longitudinal study, which could be 2017 or 2021? What is the cost of doing an assessment of services and resources available in the state of Oregon for victims of teen dating and violence? Logistically, this cost is separate from the cost of the longitudinal study or the additional survey questions. The survey can only measure what services survey participants are aware of – not provide a true assessment of what services and programs are actually available. LFO believes an assessment of what services and programs are available in Oregon will be a separate cost from the longitudinal study and the additional survey questions.

SECTION 11 stipulates that OHA is only required to carry out the longitudinal study if the authority obtains sufficient moneys. OHA is only obligated until July 1, 2013 to identify a funding source for the longitudinal study.

This language is modeled after HB 3633 (2010). Note that this language was used in HB 3633 because a funding source had been identified, but not yet officially secured. This language ensured that if by some unforeseen chance, the funding source failed to materialize, the agency was not obligated to carry out the provisions of HB 3633. By the time HB 3633 reached JW&M during the 2010 session, the funding source was secured and the bill passed with a budget report to allocate funding for the provisions of the bill. However, the funding source for the requirements of HB 2438-2 has not been identified and HB 2438-2, in effect, directs OHA to seek out funding. The cost for this fundraising work by OHA will need to be quantified.

KEY

Black = Provision of Bill

Blue = LFO Questions/Concerns

Green = Information from agency FIS on original version of bill

House Bill 2671

Sponsored by Representative DOHERTY

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 **as introduced**.

Creates State Office of the Public Guardian and Conservator to provide public guardian and conservator services for persons without relatives or friends willing or able to serve as guardians or conservators. Directs Governor to appoint Public Guardian and Conservator as administrative head of office. Prescribes duties and responsibilities of Public Guardian and Conservator and office. Requires office to certify and train deputy public guardians and conservators. Requires office to develop volunteer program to assist office. Imposes certain limitations on court orders in proceedings brought by office.

Establishes Public Guardian and Conservator Advisory Committee.

Renames existing offices of public guardian and conservator as county offices of public guardian and conservator.

Creates State Office of the Public Guardian and Conservator Fund and continuously appropriates moneys in fund to State Office of the Public Guardian and Conservator.

A BILL FOR AN ACT

Relating to fiduciary services in probate courts for persons with inadequate resources; creating new provisions; amending ORS 125.240, 125.410, 125.700, 125.705, 125.710, 125.715, 125.720, 125.725 and 125.730; and appropriating money.

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

STATE OFFICE OF THE PUBLIC GUARDIAN AND CONSERVATOR

SECTION 1. Sections 2 to 10 of this 2013 Act are added to and made a part of ORS chapter 125.

SECTION 2. For purposes of sections 2 to 10 of this 2013 Act:

(1) "Client" means a person who receives public guardian and conservator services from the State Office of the Public Guardian and Conservator.

(2) "Deputy public guardian and conservator" means a person who is employed by or under contract with the office, who is certified by the office and who provides services as a fiduciary appointed by the court to clients under sections 2 to 10 of this 2013 Act.

(3) "Public guardian and conservator services" means services, including but not limited to information, assistance, legal representation and services as a court-appointed fiduciary in guardianship or conservatorship proceedings that are provided by deputy public guardians and conservators, volunteers and staff in the office.

SECTION 3. (1) The State Office of the Public Guardian and Conservator is established, to function separately and independently from any other state agency.

(2) The Governor shall appoint the Public Guardian and Conservator, subject to Senate confirmation under ORS 171.562 and 171.565, for a four-year term from a list of three nominees nominated by the Public Guardian and Conservator Advisory Committee established

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 under section 9 of this 2013 Act. The Public Guardian and Conservator must meet the qual-
 2 ifications required by the office for certification to provide fiduciary services. The Public
 3 Guardian and Conservator serves at the pleasure of the Governor and may be removed by
 4 the Governor for good cause or upon the recommendation of the Public Guardian and
 5 Conservator Advisory Committee. Vacancies must be filled within 60 days in the same man-
 6 ner as appointments are made. The Public Guardian and Conservator shall receive a salary
 7 as is fixed by the Governor, and be reimbursed for all reasonable travel and other expenses
 8 incurred in the performance of official duties.

9 (3) The Public Guardian and Conservator shall be the administrative head of the State
 10 Office of the Public Guardian and Conservator.

11 (4) The Public Guardian and Conservator may hire staff, and may hire or contract with
 12 attorneys, professional fiduciaries described in ORS 125.240 and deputy public guardians and
 13 conservators, as necessary to carry out the powers, duties and functions of the office. The
 14 Public Guardian and Conservator may prescribe the duties and assignments and fix the
 15 compensation of persons hired by or under contract with the Public Guardian and
 16 Conservator, subject to the State Personnel Relations Law. Subject to any other applicable
 17 laws regulating expenses, the persons hired by or under contract with the Public Guardian
 18 and Conservator shall be allowed reasonable travel and other expenses incurred in the per-
 19 formance of official duties.

20 (5) The Public Guardian and Conservator may delegate the exercise or discharge of any
 21 power, duty or function that is vested in or imposed by law upon the Public Guardian and
 22 Conservator to any deputy public guardian and conservator or staff person for the purpose
 23 of conducting an official act in the name of the Public Guardian and Conservator. The official
 24 act of any person acting in the name of the Public Guardian and Conservator by the au-
 25 thority of the Public Guardian and Conservator is an official act of the Public Guardian and
 26 Conservator.

27 (6) The Public Guardian and Conservator may solicit and accept gifts, grants and do-
 28 nations from public and private sources for the purpose of carrying out the provisions of
 29 sections 2 to 10 of this 2013 Act, which moneys shall be deposited in the State Office of the
 30 Public Guardian and Conservator Fund created under section 8 of this 2013 Act.

31 (7) In accordance with applicable provisions of ORS chapter 183, the Public Guardian and
 32 Conservator, in consultation with the Public Guardian and Conservator Advisory Committee,
 33 may adopt rules for the administration of the office and to carry out the provisions of
 34 sections 2 to 10 of this 2013 Act.

35 **SECTION 4.** The State Office of the Public Guardian and Conservator shall:

36 (1) Educate the public about the role and function of the office and about public guardian
 37 and conservator services.

38 (2) Provide public guardian and conservator services for persons who do not have rela-
 39 tives or friends willing or able to assume the duties of guardianship or conservatorship and
 40 for persons who lack the financial resources to obtain a private guardian or conservator.

41 (3) Certify persons as deputy public guardians and conservators.

42 (4) Develop model standards of eligibility and professional conduct for deputy public
 43 guardians and conservators and of practice and procedure in public guardianship and con-
 44 servatorship proceedings.

45 (5) Develop and implement training and educational materials for deputy public guardians

1 and conservators.

2 (6) Establish and operate a program to recruit, train and supervise volunteers to provide
3 assistance to the office, deputy public guardians and conservators and clients.

4 (7) Establish a process, including criteria and standards, to determine the eligibility of
5 persons to receive public guardian and conservator services and for the needs assessment
6 required under section 5 of this 2013 Act.

7 (8) Cooperate with county offices of public guardian and conservator operating under
8 ORS 125.700.

9 (9) Work with existing local and county programs and with other organizations and en-
10 tities to develop and expand public guardian and conservator services in this state.

11 (10) Make recommendations to the Legislative Assembly for policy and legislation re-
12 garding implementation, improvement and expansion of public guardian and conservator
13 services in this state.

14 **SECTION 5.** (1) Prior to filing a petition for the appointment of a fiduciary under ORS
15 125.055 or any other pleading under this chapter, the State Office of the Public Guardian and
16 Conservator shall conduct a needs assessment with the person who would be the respondent
17 or protected person under the petition or pleading. The needs assessment must be done by
18 a deputy public guardian and conservator. The purpose of the needs assessment is to deter-
19 mine the person's eligibility to receive public guardian and conservator services and to de-
20 termine the appropriateness of filing a petition for the appointment of a fiduciary or other
21 pleading on behalf of the person in a court having probate jurisdiction. The assessment shall,
22 at a minimum:

23 (a) Assess the person's capacity to:

24 (A) Care for the person's own safety;

25 (B) Manage the person's own financial affairs; and

26 (C) Attend to and provide for necessities such as food, shelter, clothing and medical care;

27 (b) Assess the person's financial resources, based on information available or supplied to
28 the office at the time of the assessment;

29 (c) Determine whether the available information about the person is sufficient to support
30 a finding that the person is incapacitated or financially incapable, and the entry of a court
31 order for the appointment of a fiduciary under ORS 125.010;

32 (d) Inquire whether any other person may be willing and able to serve as the person's
33 guardian or conservator and, if appropriate, locate and contact that other person;

34 (e) Determine the type of fiduciary, if any, to request in a petition filed under ORS
35 125.055, giving preference to the least intrusive form of fiduciary relationship consistent with
36 the best interests of the person; and

37 (f) Determine how best to provide public guardian and conservator services to a client
38 that are least restrictive to the client's liberty, that are least intrusive to the client and that
39 provide for the greatest degree of independence that the client is capable of exercising.

40 (2) For each person determined to be eligible for public guardian and conservator services
41 under this section, the office shall develop a written plan setting forth the type and duration
42 of services to be provided by the office. The plan shall be included in any nonemergency pe-
43 tition or pleading filed with the court.

44 **SECTION 6.** (1) A deputy public guardian and conservator providing public guardian and
45 conservator services under sections 2 to 10 of this 2013 Act:

1 (a) Must be certified as a deputy public guardian and conservator by the State Office of
2 the Public Guardian and Conservator; and

3 (b) If appointed by the court as public guardian and conservator for a client, shall serve
4 as provided in this chapter and ORS 127.005 and 127.015, except as expressly stated otherwise
5 in sections 2 to 10 of this 2013 Act.

6 (2) A volunteer of the office who, in the course of providing authorized public guardian
7 and conservator services, has personal contact with a client must provide the office, in
8 writing, with the volunteer's criminal history and must submit or consent to a criminal re-
9 cords check, including fingerprint identification.

10 (3) Volunteers of the office:

11 (a) May not conduct the needs assessments required under section 5 of this 2013 Act;

12 (b) May not engage in conduct that constitutes the unlicensed practice of law;

13 (c) Shall be under the supervision and control of the Public Guardian and Conservator,
14 of the Public Guardian and Conservator's designee or of a deputy public guardian and
15 conservator;

16 (d) Shall be instructed in confidentiality and shall maintain the confidentiality of clients
17 and of written information and materials relating to clients;

18 (e) May not receive compensation or any other benefit but may be reimbursed by the
19 office for reasonable travel and other expenses incurred in the performance of their duties
20 on behalf of the office; and

21 (f) Are immune from civil liability for any acts or omissions occurring, or errors in
22 judgment made in good faith, in the course of providing authorized public guardian and
23 conservator services.

24 SECTION 7. (1) A court may not appoint the State Office of the Public Guardian and
25 Conservator, the Public Guardian and Conservator or a deputy public guardian and
26 conservator as a fiduciary for a person unless the office, the Public Guardian and
27 Conservator or a deputy public guardian and conservator has petitioned for or consented to
28 the appointment.

29 (2) The Public Guardian and Conservator shall file an official bond in such amount as
30 may be fixed from time to time by the Public Guardian and Conservator Advisory Committee
31 or the court having probate jurisdiction. The bond shall inure to the joint benefit of the se-
32 veral public guardianship and conservatorship estates in which the office, the Public Guard-
33 ian and Conservator and the deputy public guardians and conservators are providing
34 fiduciary services but a bond is not required to be filed in individual estates.

35 (3) The court may not charge a fee for the filing of a petition or any other pleading under
36 this chapter by the office, the Public Guardian and Conservator or a deputy public guardian
37 and conservator when the filing is made in connection with the provision of public guardian
38 and conservator services under sections 2 to 10 of this 2013 Act.

39 (4)(a) The court shall order the client or the client's estate to pay for reasonable ex-
40 penses incurred, including compensation for services rendered, in the provision of public
41 guardian and conservator services to the client, including but not limited to court costs and
42 attorney fees.

43 (b) If a client is indigent, the office shall have a claim against the client or the client's
44 estate for the portion of any payment ordered under paragraph (a) of this subsection that
45 remains unpaid.

1 (5) The court may not order the office, the Public Guardian and Conservator or a deputy
 2 public guardian and conservator to pay court costs or attorney fees in a proceeding brought
 3 on behalf of a client under sections 2 to 10 of this 2013 Act.

4 **SECTION 8.** (1) There is created within the State Treasury, separate and distinct from
 5 the General Fund, the State Office of the Public Guardian and Conservator Fund. Interest
 6 earned on the State Office of the Public Guardian and Conservator Fund shall be credited to
 7 the fund.

8 (2) Moneys in the State Office of the Public Guardian and Conservator Fund shall consist
 9 of:

10 (a) Amounts donated to the fund;

11 (b) Amounts appropriated or otherwise transferred to the fund by the Legislative As-
 12 sembly;

13 (c) Interest earned on the moneys in the fund; and

14 (d) Other amounts deposited in the fund from any source.

15 (3) Moneys in the fund are continuously appropriated to the State Office of the Public
 16 Guardian and Conservator for the purpose of implementing sections 2 to 10 of this 2013 Act.

17 **SECTION 9.** (1) There is established the Public Guardian and Conservator Advisory
 18 Committee consisting of seven members to be appointed in the following manner:

19 (a) One person appointed by the Speaker of the House of Representatives;

20 (b) One person appointed by the President of the Senate;

21 (c) One person appointed by the House Minority Leader;

22 (d) One person appointed by the Senate Minority Leader;

23 (e) Two persons, to be appointed by the Governor, from a list of four names submitted
 24 by individuals and organizations that provide guardianship and conservatorship services in
 25 this state; and

26 (f) One person appointed by the Governor.

27 (2) Members described in subsection (1)(e) and (f) of this section are subject to confir-
 28 mation by the Senate under ORS 171.562 and 171.565.

29 (3) The term of office of each member is four years. Before the expiration of the term
 30 of a member, the appointing authority shall appoint a successor whose term begins on July
 31 1 next following. A member is eligible for reappointment. If there is a vacancy for any cause,
 32 the appointing authority shall make an appointment to become immediately effective for the
 33 unexpired term.

34 (4) The members of the committee must be residents of this state who are broadly rep-
 35 resentative, to the extent possible, of persons who provide guardianship and conservatorship
 36 and other fiduciary services to persons in this state, who have knowledge and interest in the
 37 problems of persons who have inadequate resources to obtain their own fiduciary services
 38 and who are representative of all areas of this state.

39 (5) The committee shall select one of its members as chairperson and another as vice
 40 chairperson, for such terms and with duties and powers necessary for the performance of
 41 the functions and duties of these offices as the committee determines.

42 (6) A majority of the members of the committee constitutes a quorum for the transaction
 43 of business. Decisions may be made by a majority of the quorum.

44 (7) The committee shall meet at least once each month at a place, day and hour deter-
 45 mined by the committee. The committee also shall meet at other times and places specified

1 by the call of the chairperson or of a majority of the members of the committee. The com-
 2 mittee shall confer each month with the Public Guardian and Conservator.

3 (8) A member of the committee is entitled to compensation and expenses as provided in
 4 ORS 292.495.

5 (9) The State Office of the Public Guardian and Conservator shall provide staff support
 6 to the committee.

7 **SECTION 10.** The Public Guardian and Conservator Advisory Committee shall:

8 (1) Monitor the State Office of the Public Guardian and Conservator.

9 (2) Advise the Governor and the Legislative Assembly on the State Office of the Public
 10 Guardian and Conservator.

11 (3) Nominate, after interviews and according to prescribed criteria, three persons to fill
 12 the office of Public Guardian and Conservator.

13 (4) Make recommendations to the Governor for removal of the Public Guardian and
 14 Conservator when appropriate.

15 (5) Consult with the Public Guardian and Conservator in the adoption of rules to imple-
 16 ment the provisions of sections 2 to 10 of this 2013 Act.

17
 18 **COUNTY OFFICES OF PUBLIC GUARDIAN AND CONSERVATOR**

19
 20 **SECTION 11.** ORS 125.700 is amended to read:

21 125.700. The county court or board of county commissioners of any county:

22 (1) After making a determination that there exists a need within the county for a guardian or
 23 conservator for persons who do not have relatives or friends willing to serve as a guardian or
 24 conservator and capable of assuming the duties of guardianship or conservatorship, may create
 25 [*within the county*] the **county** office of public guardian and conservator and such subordinate posi-
 26 tions as may be necessary to operate effectively the **county** office of public guardian and
 27 conservator [*within the county*].

28 (2) May expend county funds for the purpose of operating the **county** office of public guardian
 29 and conservator.

30 (3) After establishment of the **county** office of public guardian and conservator [*within a*
 31 *county*], upon the finding that the county does not need the service of a public guardian and
 32 conservator, may terminate the office.

33 **SECTION 12.** ORS 125.705 is amended to read:

34 125.705. (1) The person appointed to the office of **county** public guardian and conservator shall
 35 serve in the office at the pleasure of the appointing authority. If the person holding the office of
 36 **county** public guardian and conservator [*in a county*] is removed from office, dies, becomes inca-
 37 pacitated or resigns, the removal, death, incapacity or resignation shall operate to remove [*such*]
 38 **the county** public guardian and conservator as guardian and conservator of all estates then under
 39 the guardianship and conservatorship of the person.

40 (2) As used in ORS 125.700 to 125.730, “**county public guardian and conservator**” means
 41 **the person appointed to the county office of public guardian and conservator created under**
 42 **ORS 125.700.**

43 **SECTION 13.** ORS 125.710 is amended to read:

44 125.710. (1) The **county** public guardian and conservator may serve as the guardian or
 45 conservator, or both, of any person of whom the court having probate jurisdiction in the county may

1 have jurisdiction. The **county** public guardian and conservator may serve as guardian or
 2 conservator upon the petition of any person or upon the [own] petition of the **county** public guard-
 3 ian and conservator.

4 (2) When appointed as guardian or conservator by the court having probate jurisdiction, the
 5 **county** public guardian and conservator shall serve as provided in ORS chapter 125, ORS 127.005
 6 and 127.015, except as specifically stated to the contrary in ORS 125.700 to 125.730.

7 (3) The **county** public guardian and conservator in the discretion of the **county** public guardian
 8 and conservator may employ private attorneys if the fees for the attorneys can be defrayed out of
 9 funds of the guardianship or conservatorship estate.

10 **SECTION 14.** ORS 125.715 is amended to read:

11 125.715. (1) Before entering into office as **county** public guardian and conservator, the person
 12 appointed to the office shall file an official bond in such amount as may be fixed from time to time
 13 by the board of county commissioners or the court having probate jurisdiction, which bond shall
 14 inure to the joint benefit of the several guardianship [or] **and** conservatorship estates in which the
 15 person is acting as guardian or conservator and the county. The **county** public guardian and
 16 conservator shall not be required to file bonds in individual estates.

17 (2) Upon removal of the **county** public guardian and conservator in accordance with the pro-
 18 visions of ORS 125.705, the surety on the **county** public guardian and conservator bond shall be
 19 exonerated upon order to that effect of the court having probate jurisdiction in the county.

20 **SECTION 15.** ORS 125.720 is amended to read:

21 125.720. All funds coming into the custody of the **county** public guardian and conservator shall
 22 be deposited in the county treasury and disbursed by proper warrant, or shall be deposited in one
 23 or more banks or invested in one or more insured savings and loan associations authorized to do
 24 business within the county, or as provided by ORS 125.445 (5).

25 **SECTION 16.** ORS 125.725 is amended to read:

26 125.725. The **county** public guardian and conservator shall have a claim against the ward's or
 27 protected person's estate for reasonable expenses incurred in the execution of the guardianship or
 28 conservatorship and such compensation for services and those of the attorney of the **county** public
 29 guardian and conservator as the court having probate jurisdiction in the county deems just and
 30 reasonable. If the **county** public guardian and conservator is compensated by the county for ser-
 31 vices, any reimbursement of expenses or compensation shall be paid to the county.

32 **SECTION 17.** ORS 125.730 is amended to read:

33 125.730. No fee shall be charged or received by any court having probate jurisdiction for the
 34 filing of any petition asking for the appointment of the **county** public guardian and conservator **as**
 35 **the guardian or conservator** or for any official service performed by that court in the course of
 36 the guardianship or conservatorship proceedings.

37
 38 **CONFORMING AMENDMENTS**
 39

40 **SECTION 18.** ORS 125.240 is amended to read:

41 125.240. (1) If a petition seeks the appointment of a professional fiduciary as described in sub-
 42 section (5) of this section, the petition must contain the following information in addition to that
 43 information required under ORS 125.055:

44 (a) A description of the events that led to the involvement of the professional fiduciary in the
 45 case.

- 1 (b) The professional fiduciary's educational background and professional experience.
- 2 (c) The fees charged by the professional fiduciary and whether the fees are on an hourly basis
3 or are based on charges for individual services rendered.
- 4 (d) The names of providers of direct services to protected persons that are repeatedly used by
5 the professional fiduciary under contract.
- 6 (e) The disclosures required under ORS 125.221 if the person nominated to act as fiduciary will
7 employ a person in which the nominated person has a pecuniary or financial interest.
- 8 (f) The number of protected persons for whom the person performs fiduciary services at the time
9 of the petition.
- 10 (g) Whether the professional fiduciary has ever had a claim against the bond of the fiduciary
11 and a description of the circumstances causing the claim.
- 12 (h) Whether the professional fiduciary or any staff with responsibility for making decisions for
13 clients or for management of client assets has ever filed for bankruptcy and the date of filing.
- 14 (i) Whether the professional fiduciary or any staff with responsibility for making decisions for
15 clients or for management of client assets has ever been denied a professional license that is directly
16 related to responsibilities of the professional fiduciary, or has ever held a professional license that
17 is directly related to responsibilities of the professional fiduciary that was revoked or canceled. If
18 such a license has been denied, revoked or canceled, the petition must reflect the date of the denial,
19 revocation or cancellation and the name of the regulatory body that denied, revoked or canceled the
20 license.
- 21 (j) A statement that the criminal records check required under subsection (2) of this section does
22 not disqualify the person from acting as a fiduciary.
- 23 (k) Whether the professional fiduciary and any staff responsible for making decisions for clients
24 or for management of client assets is or has been certified by a national or state association of
25 professional fiduciaries, the name of any such association and whether the professional fiduciary or
26 other staff person has ever been disciplined by any such association and the result of the discipli-
27 nary action.
- 28 (L) The name, address and telephone number of the individual who is to act as primary decision
29 maker for the protected person and the name of the person with whom the protected person will
30 have personal contact if that person is not the person who will act as primary decision maker for
31 the protected person.
- 32 (2)(a) If a petition seeks the appointment of a professional fiduciary as described in subsection
33 (5) of this section, the professional fiduciary and all staff with responsibility for making decisions for
34 clients or for management of client assets must undergo a criminal records check before the court
35 may appoint the professional fiduciary. The results of the criminal records check shall be provided
36 by the petitioner to the court. Results of criminal records checks submitted to the court are confi-
37 dential, shall be subject to inspection only by the parties to the proceedings and their attorneys, and
38 shall not be subject to inspection by members of the public except pursuant to a court order entered
39 after a showing of good cause. A professional fiduciary must disclose to the court any criminal
40 conviction of the professional fiduciary that occurs after the criminal records check was performed.
41 The criminal records check under this subsection shall consist of a check for a criminal record in
42 the State of Oregon and a national criminal records check if:
- 43 (A) The person has resided in another state within five years before the date that the criminal
44 records check is performed;
- 45 (B) The person has disclosed the existence of a criminal conviction; or

1 (C) A criminal records check in Oregon discloses the existence of a criminal record in another
 2 jurisdiction.

3 (b) The requirements of this subsection do not apply to any person who serves as a **county**
 4 public guardian [or] **and** conservator, or any staff of a **county** public guardian [or] **and** conservator,
 5 [who is] operating under ORS 125.700 to 125.730 or 406.050 [and who is otherwise required to acquire
 6 a criminal records check for other purposes], **or to the State Office of the Public Guardian and**
 7 **Conservator, the Public Guardian and Conservator, a deputy public guardian and conservator**
 8 **or the staff or volunteers of the State Office of the Public Guardian and Conservator, oper-**
 9 **ating under sections 2 to 10 of this 2013 Act, unless the person is otherwise required to**
 10 **submit to a criminal records check under ORS 125.700 to 125.730 or sections 2 to 10 of this**
 11 **2013 Act.**

12 (3)(a) If a petition seeks the appointment of a **county** public guardian and conservator operating
 13 under the provisions of ORS 125.700 to 125.730, **the appointment of the State Office of the Public**
 14 **Guardian and Conservator, the Public Guardian and Conservator or a deputy public guardian**
 15 **and conservator operating under the provisions of sections 2 to 10 of this 2013 Act,** or the
 16 appointment of a conservator under ORS 406.050 (8), the petition need not contain the information
 17 described in subsection (1)(d) or (L) of this section.

18 (b) If a **county** public guardian and conservator operating under the provisions of ORS 125.700
 19 to 125.730, **or the State Office of the Public Guardian and Conservator, the Public Guardian**
 20 **and Conservator or a deputy public guardian and conservator operating under the provisions**
 21 **of sections 2 to 10 of this 2013 Act,** is appointed to act as a fiduciary, or a conservator operating
 22 under the authority of ORS 406.050 (8) is appointed, the **county** public guardian [or] **and**
 23 conservator, **the office, the Public Guardian and Conservator, the deputy public guardian and**
 24 **conservator or the conservator** must file with the court within three days after receipt of written
 25 notice of the appointment a statement containing the name, address and telephone number of the
 26 individual who will act as primary decision maker for the protected person and the name of the
 27 person with whom the protected person will have personal contact if the person named as primary
 28 decision maker will not have personal contact with the protected person.

29 (4) If the court appoints a professional fiduciary as described in subsection (5) of this section,
 30 the professional fiduciary must update all information required to be disclosed by subsection (1) of
 31 this section and provide a copy of the updated statement upon the request of the protected person
 32 or upon the request of any person entitled to notice under ORS 125.060 (3). The professional
 33 fiduciary must provide an updated statement without demand to the court, the protected person and
 34 persons entitled to notice under ORS 125.060 (3) at any time that there is a change in the informa-
 35 tion provided under subsection (1)(L) or (3)(b) of this section.

36 (5) The provisions of this section apply to any person nominated as a fiduciary or serving as a
 37 fiduciary who is acting at the same time as a fiduciary for three or more protected persons who are
 38 not related to the fiduciary.

39 **SECTION 19.** ORS 125.410 is amended to read:

40 125.410. (1) Except as provided in subsection (2) of this section, the court shall require a
 41 conservator to furnish a bond conditioned upon faithful discharge of all duties of the conservator
 42 according to law, with sureties as specified by the court. Unless otherwise directed, the bond must
 43 be in the amount of the aggregate capital value of the property of the estate in the control of the
 44 conservator plus one year's estimated income minus the value of securities and money deposited
 45 under arrangements requiring an order of the court for their removal and the value of any real

1 property that the conservator, by express limitation of power, lacks power to sell or convey without
2 court authorization.

3 (2)(a) The court may waive a bond for good cause shown.

4 (b) Subsection (1) of this section does not affect the provisions of ORS 709.240, relating to a trust
5 company acting as fiduciary, ORS 125.715, relating to a **county public guardian and conservator**
6 **acting as fiduciary, section 7 of this 2013 Act, relating to the State Office of the Public**
7 **Guardian and Conservator, the Public Guardian and Conservator or a deputy public guardian**
8 **and conservator acting as fiduciary under sections 2 to 10 of this 2013 Act,** or ORS 406.050 (8),
9 relating to the Department of Veterans' Affairs acting as fiduciary.

10 (3) Sureties for a bond required under this section are jointly and severally liable with the
11 conservator and with each other.

12 (4) Letters of conservatorship may not be issued until the bond required by this section is ap-
13 proved by the court.

14 (5) The bond of the conservator continues in effect until the sureties on the bond are released
15 by order of the court.

16 (6) The court may at any time increase or reduce the amount of the bond required of a
17 conservator for the protection of the protected person and the estate of the protected person.

18 (7) If a surety on a bond required by this section gives notice of intent to cancel the bond, the
19 conservator shall execute and file in the protective proceeding a new bond before the cancellation
20 date specified by the surety. The new bond shall be in the amount and subject to those conditions
21 that may be required by the court. If the conservator fails to file a new bond, the authority of the
22 conservator ends on the date specified by the surety for cancellation of the bond. The letters of
23 conservatorship issued to the conservator are void from that date, and the conservator must make
24 and file the final accounting of the conservator.

25
26 **UNIT CAPTIONS**

27
28 **SECTION 20. The unit captions used in this 2013 Act are provided only for the conven-**
29 **ience of the reader and do not become part of the statutory law of this state or express any**
30 **legislative intent in the enactment of this 2013 Act.**

31
32 **APPLICABILITY**

33
34 **SECTION 21. Sections 2 to 10 of this 2013 Act and the amendments to ORS 125.240,**
35 **125.410, 125.700, 125.705, 125.710, 125.715, 125.720, 125.725 and 125.730 by sections 11 to 19 of this**
36 **2013 Act apply to protective proceedings commenced on or after the effective date of this**
37 **2013 Act.**

38 _____

Black = content of bill

Green = LFO comments/questions

Blue = LFO preliminary benchmark calculations/findings/agencies' replies to request for info

Potentially affected agencies – noon 3/14/2013	Request Sent	Reply Received
DAS / Governor's Office	x	F
Justice	x	F
Judicial	x	F
OSP	x	Minimal
Counties	x	NF
FYI to DHS/OHA	x	

SECTION 1: Adds this act to ORS Chapter 125

SECTION 2: Defines: (1) client, (2) deputy public guardian and conservator, (3) public guardian and conservator services

SECTION 3: Establishes the State Office of the Public Guardian and Conservator as a **new state agency**.
Administrative head (Public Guardian and Conservator):

- Appointed by Governor.
- Must meet the qualifications required by the office for **certification** to provide public guardian and conservator services.
- Salary determined by the Governor and **reimbursed for all reasonable travel and other expenses** incurred in the performance of official duties.
- **May hire staff, and may hire or contract with attorneys, professional fiduciaries.**
- **May solicit and accept gifts, grants and donations from public and private sources**
- Adopt rules for the administration of the office

Type of agency: Agency will be a full state agency, not semi-independent.

Impact to LFO/CFO.

Per DAS estimate: Service Charges and Assessments including Facilities Rent ≈ \$143,065 (small agency with < 6 FTEs) to \$456,816 (with 18 FTEs).

Staffing and Oversight: What level of legal, medical, real estate, accounting or other financial expertise will be required for staff? How much staff time will be utilized for consultation, information and referral (I&R), client management, community education, or administrative duties? Section 4 stipulates some of the services that must be provided. In addition to guardian and conservator skill sets, staff will need: training/education, volunteer recruitment/training/management, contract management, fundraising skills.

Multnomah served 165 clients with a staff of 10 and a \$1,150,000 annual budget (\$2,300,000 biennial). Per client cost of \$6,970.

Clackamas served 35 with a staff of 2 and a \$100,000 annual budget (\$200,000 biennial). Per client cost of \$2,857.

*The Oregon Department of Veteran's Affairs (ODVA) has a program that provides **only conservatorships** to veterans. The program has been in existence since 1965. The program currently serves about 150-160 individuals. The 2011-13 Legislatively Approved Budget for the program = \$1,327,408 with 7 FTEs. Of that amount \$1,178,000 is Personal Services. The remainder is travel, training for staff, general office expenses, state government service charges, and AG/DOJ costs. Most work is done in-house. ODVA does contract with local CPAs for client income tax returns. The Department created its own internal software to make/track payments on behalf of clients, create annual accountings for the court, and other various client/case management tools.*

3 Trust Officers

2 Trust Officers Assistants (Admin Spec I)

1 Conservatorship Secretary (Office Spec 2)

1 Conservatorship Manager (PEM B)

Personal Services and Related Services and Supplies – See worksheets:

HB 2671 (Central Statewide model) ≈ \$3.3 to \$4.2 Million for a staff of 18 FTEs

HB 2671 (Central Statewide model) ≈ \$2.5 to \$2.9 Million for a staff of 14 FTEs

HB 2671 (Central Statewide model) ≈ \$1.8 to \$1.9 Million for a staff of 10 FTEs

Travel / Reimbursement / Facilities Costs: What is the geographic spread of those served? Is there any idea of how the need will be distributed? Where is the ideal location for the office? What will staff/volunteer travel reimbursement costs look like? Will there be a need for regional offices?

Indeterminate

Special Payments / Contract Services costs: How many private, non-profit organizations that provide guardianship services exist in Oregon? Arc of Oregon. Multnomah County. Is there existing capacity or will this new agency be required to build capacity through its certification process?

In 2010, the Office of Public Guardianship in the State of Washington's Administrative Office of the Courts contracts with certified professional guardians to provide public guardianship services for a daily rate of \$10.68 per ward (not to exceed \$325 per month, \$525 per month in the first three months of a case; \$3,900 per year) with a required staff to ward ratio of no more than 1:20 (HB 2671 does not set a staff to ward ratio). Using the 250 assumption:

*\$3,900*250*2 ≈ \$1,950,000 in contract costs.*

SECTION 4: Duties of the office:

1. Educate the public
2. Provide public guardian and conservator services for persons **who do not have relatives or friends willing or able to assume the duties of guardianship or conservatorship and for persons who lack the financial resources to obtain a private guardian or conservator.**
3. **Certify persons as deputy public guardians and conservators.**
4. **Develop model standards of eligibility and professional conduct for deputy public guardians and conservators and of practice and procedure in public guardianship and conservatorship proceedings.**
5. Develop and implement training and educational materials for deputy public guardians and conservators.
6. Establish and operate a program to recruit, train and supervise volunteers to provide assistance to the office, deputy public guardians and conservators and clients.
7. **Establish a process, including criteria and standards, to determine the eligibility of persons to receive public guardian and conservator services and for the needs assessment.**
8. Cooperate with county offices of public guardian and conservator operating under ORS 125.700.
9. Work with existing local and county programs and with other organizations and entities to develop and expand public guardian and conservator services in this state.
10. Make recommendations to the Legislative Assembly for policy and legislation regarding implementation, improvement and expansion of public guardian and conservator services in this state.

Certification Costs: HB 2671 requires this new state agency to “certify persons as deputy public guardian.” HB 2671 requires the governor to appoint the Public Guardian and this individual must meet the qualifications required by the office for certification to provide public guardian and conservator services. Bill is silent on the entity is responsible for the development of standards for certification. What will the certification process look like? Will the new agency just use existing certifying entities or will it establish its own certification process? What kind of documentation and renewal process will need to be established? Is dedicated staff needed? Will there be fees associated with this process? In contracting with non-profits, will this new agency end up regulating professional guardians? Will public guardians be held to a different certification process than private guardians?

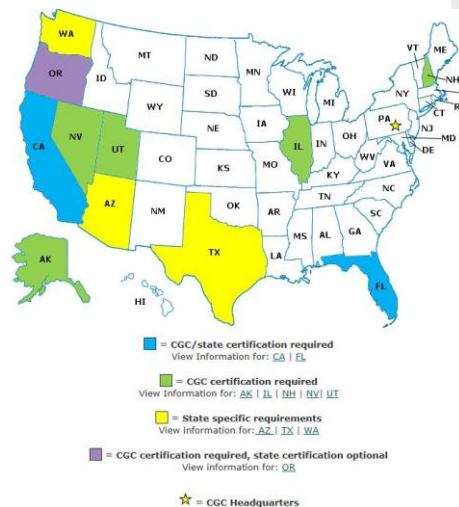
In 2010, the Washington Certified Professional Guardian Board (WCPGB) considered 61 applications, granted 58 certifications, denied 3. The 14-member Board certifies and regulates individuals and agencies. Current stats: 242 Certified Professional Guardians, 41 Certified Professional Guardian Agencies.

Currently, the Oregon Certified Professional Fiduciary Certification is a voluntary program. An individual must be a Nationally Certified Guardian (NCG) through the Center for Guardianship Certification (CGC) to become an Oregon Certified Professional Fiduciary (OCPF). CGC certification includes criminal background check. The Oregon Guardian/Conservator Association of Oregon (GCA) lists approximately 145 members (17 of which are attorneys). NCG = National Certified Guardian

NMG = National Master Guardian

<i>Fees</i>	<i>NCG</i>	<i>NMG</i>
<i>Application Fee</i>	\$50	\$50
<i>Exam Fee</i>	\$225 for the first time \$100 if re-testing	\$475 for the first time \$100 for re-testing
<i>Recertification Fee (every 3 years)</i>	\$175	\$250
<i>Background Check Fee</i>	\$47.25	\$47.25

*Guardian/Conservator Association of Oregon (GCA) – <http://www.gcaoregon.org/>
 National Guardianship Association (NGA) – <http://www.guardianship.org/index.htm>
 Center for Guardianship Certification – <http://guardianshipcert.org/index.cfm>*



Membership Dues: Membership to the National Guardianship Association (NGA) Annual dues = \$260 for one primary contact, with an additional \$110 per additional person.

Storage costs: Cost for secure storage of clients valuables and property.
*Per Tina Stokes-Gehring, Facilities Administration: Using Rose City Moving and Storage (WIC office uses this vendor for storage) rate of \$75.00 per square foot per month, and assuming the rental of a 10x10 storage unit ≈ \$75*100*24 = \$180,000*

SECTION 5: Requires Office to conduct a needs assessment before filing a petition for appointment of a fiduciary. Needs assessment must be done by a deputy public guardian and conservator. Needs Assessment must include:

- A determination of whether the available information about the person is sufficient to support a finding that the person is incapacitated or financially incapable, and the entry of a court order for the appointment of a fiduciary under ORS 125.010.

- **And inquiry on whether any other person may be willing and able to serve as the person's guardian or conservator and, if appropriate, locate and contact that other person.**
- **A written plan setting forth the type and duration of services to be provided by the office or each person determined to be eligible for public guardian and conservator services. The plan shall be included in any nonemergency petition or pleading filed with the court.**

Screening and in-take costs: Will agency need dedicated staff just to handle referrals? Once an individual is referred to agency, staff of this new state office will be responsible for screening referrals, conduct a face-to-face needs assessment. Bill direct this new agency to "inquire whether any other person may be willing and able to serve as the person's guardian or conservator and, if appropriate, locate and contact that other person..."

*To locate relatives, the Utah Public Guardian Office uses an internet legal research service (<http://web2.westlaw.com>; contact Thomas Hamilton 651-687-5744, email: Thomas.hamilton@thomsonreuters.com). With two authorized users, Utah pays about \$275 a month for the service. Estimated biennial cost for Oregon Office = $\$275 * 24 \approx \$6,600$*

Case management costs/Managing written plans required by the bill:

Data collection on caseload and analysis to promote effective decision-making, planning and management:

- Demographics (Age, gender, race/ethnicity, marital status)
- Economic situation (annual income)
- Type of guardianship provided
- Health and Functioning levels (decision making, ability to provide information to guardian, activities of daily living, orientation to person, place and time)
- Living situation (type of residence)
- Diagnoses and incapacitation
- Historical description of client characteristics
- Trend analysis for projecting future demands

The software system the Utah Public Guardian Office uses for case management is Estate Management system by SEMApplications.com (contact person Laura Elder 660-446-3031 or lelder@semapplications.com).

*The monthly cost for the EMS web based edition is based on the number of active cases with a minimum of \$20. The cost can be as low as \$5 per month per case with no upfront or startup fees which provides a cost effective option for new startup organizations. With a NGA discount, the cost drops by 20%. The web edition does not require set up charges or annual maintenance fees. Online training and 24/7 technical support are included in the monthly rate.
 $\approx \$10 * 250 * 24 = \$60,000$*

The desktop edition is priced according to the number of users and once the purchase is complete, there are no ongoing monthly charges. Online training, 24/7 technical support, program upgrades, and development are purchased via an Annual Support Agreement. The Desktop application starts at \$1,700 for a single user system and includes a 1 year Support Agreement. NGA members receive a 10% discount up to \$1,500.

SECTION 6: Requirements/Qualifications/Immunity

Deputy public guardian and conservator:

- **Must be certified as a deputy public guardian and conservator by the State Office of the Public Guardian and Conservator.**
- If appointed by the court as public guardian and conservator for a client, shall serve as provided in this chapter and ORS 127.005 and 127.015, except as expressly stated otherwise in sections 2 to 10 of this 2013 Act.

A volunteer of the office who, in the course of providing authorized public guardian and conservator services, has personal contact with a client must provide the office, in writing, with the volunteer's criminal history and must submit or **consent to a criminal records check, including fingerprint identification.** Volunteers of the office:

- May not conduct the needs assessments required under section 5 of this 2013 Act.
- May not engage in conduct that constitutes the unlicensed practice of law.
- Shall be under the supervision and control of the Public Guardian and Conservator or designee.
- Shall be instructed in confidentiality and shall maintain the confidentiality of clients and of written information and materials relating to clients.
- May not receive compensation or any other benefit but may be reimbursed by the office for reasonable travel and other expenses incurred in the performance of their duties on behalf of the office.
- Are immune from civil liability for any acts or omissions occurring, or errors in judgment made in good faith, in the course of providing authorized public guardian and conservator services.

Criminal Background Check Costs: Volunteers must submit to criminal background checks, including fingerprinting. Most likely background checks will be required of other individuals serving as conservators and guardians.

Amount for background check through OSP = \$47.25 each.

SECTION 7: Stipulates that court may not appoint this new office as fiduciary for a person unless the office has petitioned for the appointment, so this new agency can control the number of clients/wards. The state will only serve as a guardian of last resort for wards who do not have relatives or friends willing or able to assume the duties of guardianship or conservatorship; or who do not have the financial resources to obtain a private guardian or conservator.

- The Office **will file an official bond** in such amount as may be fixed from time to time by the Public Guardian and Conservator Advisory Committee or the court having probate jurisdiction. The bond shall inure to the joint benefit of the several public guardianship and conservatorship estates in which the office, the Public Guardian and Conservator and the deputy public guardians and conservators are providing fiduciary services but a bond is not required to be filed in individual estates.
- **The court may not charge a fee for the filing of a petition or any other pleading under this chapter by the office,** the Public Guardian and Conservator or a deputy public guardian and conservator when the filing is made in connection with the provision of public guardian and conservator services under sections 2 to 10 of this 2013 Act.
- The court shall order the client or the client's estate to pay for reasonable expenses incurred, including compensation for services rendered, in the provision of public guardian and conservator services to the client, including but not limited to court costs and attorney fees.

- If a client is indigent, the office shall have a claim against the client or the client’s estate for the portion of any payment ordered under paragraph (a) of this subsection that remains unpaid.
- **The court may not order the office, the Public Guardian and Conservator or a deputy public guardian and conservator to pay court costs or attorney fees in a proceeding brought on behalf of a client under sections 2 to 10 of this 2013 Act**

Who will be served? Will this include all incapacitated individuals determined to need a guardian who has no person or private entity qualified and willing to serve? Will it be limited to elderly? Specific mental abilities? Minors? Section 4 allows this new agency to “establish a process, including criteria and standards, to determine the eligibility of persons to receive public guardian and conservator services and for the needs assessment...”

Indeterminate

Projecting caseload and unmet needs: Projected range ≈ 250 to 878? Is there a risk of the office inheriting cases and pre-existing contracts from other agencies (e.g. Multnomah County)?

Indeterminate

Attorney General/Judicial and other legal costs: Bill specifies that in proceedings filed by this new state agency, the court may not require a bond or charge a fee for the filing of a petition or any other pleading. Does this include accounting fees and the **cost of psychological exams?**

From Oregon Judicial Department (OJD)

Accounting Fees

Value of the estate is less than \$50,000	ORS 21.180(2)(a)	\$30
Value of the estate is \$50,000 or more, but less than \$1,000,000	ORS 21.180(2)(b)	\$255
Value of the estate is \$1,000,000 or more, but less than \$10,000,000	ORS 21.180(2)(c)	\$505
Value of the estate is \$10,000,000 or more	ORS 21.180(2)(d)	\$1,005
Amended pleading increasing amount (Based on increase)	ORS 21.105(2)	

Assuming that Multnomah County, with 20% of the state’s population, spent 260 hours per year handling probate contested cases and motion practice, the Department of Justice (DOJ) roughly estimates it would take 1,300 hours per year to carry out this work statewide. Using this assumption, DOJ estimates AG costs to be ≈\$181,372 for the 2011-13 biennium and ≈ \$576,985 for the 2013-15 biennium. DOJ anticipates establishing an Assistant Attorney General, and a part-time Legal Secretary position to support this work.

SECTION 8: Establishes State Office of the Public Guardian and Conservator Fund.

SECTION 9: Establishes the 7-member Public Guardian and Conservator Advisory Committee.

- Committee must **meet at least once each month.**
- Members entitled to compensation and expenses as provided in ORS 292.495.
- State Office of the Public Guardian and Conservator will provide staff support.

Cost for Advisory Committee: From existing state entities with boards and commissions of similar size range from \$5,000 to \$32,000 depending on how often members meet, how members are compensated and reimbursed.

SECTION 10: Duties of the 7-member Public Guardian and Conservator Advisory Committee.

- Monitor the State Office of the Public Guardian and Conservator.
- Advise the Governor and the Legislative Assembly on the State Office of the Public Guardian and Conservator.
- Nominate, after interviews and according to prescribed criteria, three persons to fill the office of Public Guardian and Conservator.
- Make recommendations to the Governor for removal of the Public Guardian and Conservator when appropriate.
- Consult with the Public Guardian and Conservator in the adoption of rules to implement the provisions of sections 2 to 10 of this 2013 Act.

SECTION 11: Counties offices.

SECTION 12 THROUGH 19: Conforming amendments

Funding sources from other States:

- Mostly state GF
- Client fees
- Estate recovery
- Counties
- Federal (Medicaid – Administrative Claiming like Illinois or Targeted Case Management like Kentucky, Social Services Block Grants, Title 19)
- United Way
- Grants, foundations
- Private donations
- Interest on Trust Accounts

Human Services Cost Savings Identified from other States:

- Facilitating the discharge of wards from medical hospitals or state hospital to assisted living facilities or nursing home
- Securing community-based services for wards (to prevent moving to a more restrictive environment)
- Arrangements for pre-paid funerals

Public Safety Cost Savings:

- Prevention of fraud and elder abuse

Relating ORS:

Chapter 125 — Protective Proceedings

2011 EDITION

PROTECTIVE PROCEEDINGS

PROTECTIVE PROCEEDINGS; POWERS OF ATTORNEY; TRUSTS

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- 125.010 Protective proceedings
- 125.012 Petition for protective order; disclosure of information; confidentiality; inspection; visitor report
- 125.015 Jurisdiction of protective proceedings; proceedings in other states
- 125.020 Venue for protective proceedings
- 125.025 Authority of the court in protective proceedings
- 125.030 Use of limited judgment in protective proceedings

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- 125.055 Petitions in protective proceedings
- 125.060 Who must be given notice
- 125.065 Manner of giving notice
- 125.070 Contents of notice
- 125.075 Presentation of objections
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(Bond)

- 125.410 Conservator's bond
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(Conservator's Powers and Duties)

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- 125.425 Powers of conservator to pay expenses of protected person and dependents
- 125.430 Sale of protected person's residence
- 125.435 Power of conservator to make gifts
- 125.440 Acts conservator may perform only with court approval
- 125.445 Acts authorized to be performed without prior court approval
- 125.450 Voidable transactions

(Desires of Protected Person)

- 125.455 Power of competent protected person over estate
- 125.460 Consideration of estate plan of protected person

(Inventory of Property)

125.465 Discovery of property; examination by conservator

125.470 Filing of inventory required; supplemental inventory

(Accountings)

125.475 Conservator's accounting to court; contents

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Note Public Guardian and Conservator Task Force--2011 c.525 §§1,2

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UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT

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(Article 5 - Miscellaneous Provisions)

125.850 Uniformity of application and construction

125.852 Relation to Electronic Signatures in Global and National Commerce Act

GENERAL PROVISIONS

125.005 Definitions. As used in this chapter:

(1) "Conservator" means a person appointed as a conservator under the provisions of this chapter.

(2) "Fiduciary" means a guardian or conservator appointed under the provisions of this

chapter or any other person appointed by a court to assume duties with respect to a protected person under the provisions of this chapter.

(3) “Financially incapable” means a condition in which a person is unable to manage financial resources of the person effectively for reasons including, but not limited to, mental illness, mental retardation, physical illness or disability, chronic use of drugs or controlled substances, chronic intoxication, confinement, detention by a foreign power or disappearance. “Manage financial resources” means those actions necessary to obtain, administer and dispose of real and personal property, intangible property, business property, benefits and income.

(4) “Guardian” means a person appointed as a guardian under the provisions of this chapter.

(5) “Incapacitated” means a condition in which a person’s ability to receive and evaluate information effectively or to communicate decisions is impaired to such an extent that the person presently lacks the capacity to meet the essential requirements for the person’s physical health or safety. “Meeting the essential requirements for physical health and safety” means those actions necessary to provide the health care, food, shelter, clothing, personal hygiene and other care without which serious physical injury or illness is likely to occur.

(6) “Minor” means any person who has not attained 18 years of age.

(7) “Protected person” means a person for whom a protective order has been entered.

(8) “Protective order” means an order of a court appointing a fiduciary or any other order of the court entered for the purpose of protecting the person or estate of a respondent or protected person.

(9) “Protective proceeding” means a proceeding under this chapter.

(10) “Respondent” means a person for whom entry of a protective order is sought in a petition filed under ORS 125.055.

(11) “Visitor” means a person appointed by the court under ORS 125.150 for the purpose of interviewing and evaluating a respondent or protected person. [1995 c.664 §1; 2007 c.70 §31]

125.010 Protective proceedings. (1) Any person who is interested in the affairs or welfare of a respondent may file a petition for the appointment of a fiduciary or entry of other protective order.

(2) A protective proceeding is commenced by the filing of a petition in a court with jurisdiction over protective proceedings.

(3) The court may appoint any of the following fiduciaries in a protective proceeding:

(a) A guardian, with the powers and duties specified in this chapter.

(b) A conservator, with the powers and duties specified in this chapter.

(c) A temporary fiduciary, with the powers and duties specified in this chapter.

(d) Any other fiduciary necessary to implement a protective order under ORS 125.650.

(4) In addition to appointing a fiduciary, or in lieu of appointing a fiduciary, the court may enter any other protective order in a protective proceeding in the manner provided by ORS 125.650.

(5) The court may make a determination described in ORS 127.550 with regard to an advance directive in a protective proceeding in which a guardian or temporary guardian has been appointed for the principal, or in which the petition seeks the appointment of a guardian or a temporary guardian for the principal. [1995 c.664 §2; 2001 c.396 §1]

125.012 Petition for protective order; disclosure of information; confidentiality; inspection; visitor report. (1) As used in this section:

(a) "Party" means:

(A) A person who is the subject of a petition for a protective order.

(B) A person who has petitioned for appointment, or who has been appointed, as a fiduciary for a protected person under this chapter.

(C) A person, not otherwise a party under this paragraph, who has filed objections as allowed under this chapter.

(D) A visitor appointed by the court in a proceeding under this chapter.

(E) Any other person who has filed a petition or motion in a proceeding under this chapter.

(b) "Protected health information" has the meaning given that term in ORS 192.556.

(c) "Protective services" has the meaning given that term in ORS 410.040.

(2) The Department of Human Services or the Oregon Health Authority, for the purpose of providing protective services, may petition for a protective order under this chapter. When the department or authority, or a petitioning attorney with whom the department or authority has contracted, petitions for a protective order under this section, the department or authority shall disclose to the court or to the petitioning attorney only a minimum amount of information about the person who is the subject of the petition, including protected health, mental health, financial, substantiated abuse and legal information, as is reasonably necessary to prevent or lessen a serious and imminent threat to the health or safety of the person who is the subject of the petition or protective order.

(3) When a petition for a protective order is filed under this chapter by a person other than the Department of Human Services, the Oregon Health Authority or an attorney with whom the department or authority has contracted, or when a protective order has already been entered, the department or authority may disclose to a court protected health, mental health, financial, substantiated abuse and legal information about the person who is the subject of the petition or protective order, or about a person who has petitioned for appointment, or who has been appointed, as a fiduciary for a protected person under this chapter. The department or authority may disclose such information without authorization from the person or fiduciary if the disclosure is made in good faith and with the belief that the disclosure is the minimum amount of information about the person or fiduciary as is reasonably necessary to prevent or lessen a serious and imminent threat to the health or safety of the person who is the subject of the petition or protective order.

(4)(a) All confidential and protected health, mental health, financial, substantiated abuse and legal information disclosed by the Department of Human Services, the Oregon Health Authority or an attorney with whom the department or authority has contracted under this section must remain confidential.

(b) Information disclosed under this section must be identified and marked by the entity or person making the disclosure as confidential and protected information that is subject to the requirements of this subsection.

(c) Information disclosed under this section is subject to inspection only by the parties to the proceedings and their attorneys as provided in subsection (5) of this section. Information disclosed under this section is not subject to inspection by members of the public except pursuant to a court order entered after a showing of good cause. Good cause under this paragraph includes the need for inspection of the information by an attorney considering representation of the person who is the subject of the petition or protective order, or of a person who has petitioned for appointment, or who has been appointed, as a fiduciary for a protected person under this chapter.

(d) Notwithstanding ORS 125.155 (4), to the extent that the report of a visitor appointed by

the court under ORS 125.150 contains information that is subject to the requirements of this subsection, the report in its entirety shall be considered subject to the requirements of this subsection and may be disclosed only as provided in paragraph (c) of this subsection.

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

(6) Nothing in this section is intended to limit the application of ORS 125.050 to the use of information disclosed under this section in proceedings under this chapter.

(7) Information may be disclosed under this section only for the purpose of providing protective services. [2009 c.512 §2; 2011 c.229 §1]

125.015 Jurisdiction of protective proceedings; proceedings in other states. (1) The probate courts and commissioners provided for in ORS chapter 111 have exclusive jurisdiction of protective proceedings.

(2) Subject to ORS 125.800 to 125.852 for adults as defined in ORS 125.802, if an Oregon court exercising probate jurisdiction becomes aware that a protective proceeding has been commenced in another state, the Oregon court shall notify the court in the other state of the proceedings in this state. After consultation with the court of the other state, the Oregon court shall determine whether it is in the best interests of the respondent or protected person for the Oregon court to continue to exercise jurisdiction in the matter or whether it would be in the best interests of the respondent or protected person to terminate the Oregon proceedings and transfer the matter to the other court. [1995 c.664 §3; 2009 c.179 §23]

125.020 Venue for protective proceedings. (1) Except as provided in this section, a protective proceeding must be commenced in the county where the respondent resides or is present.

(2) If the respondent resides in an institution by reason of an order of a court, the proceeding may be commenced in the county where that court sits.

(3) If the respondent does not reside in this state and is not present in this state, a conservatorship proceeding may be commenced in any county where property of the respondent is located.

(4) The court may transfer a protective proceeding at any time to another court if the transfer is in the best interests of the respondent or protected person. [1995 c.664 §4]

125.025 Authority of the court in protective proceedings. (1) Subject to ORS 125.800 to 125.852 for adults as defined in ORS 125.802, a court having jurisdiction over a protective proceeding shall exercise continuing authority over the proceeding. Subject to the provisions of ORS 125.800 to 125.852 and this chapter, the court may act upon the petition or motion of any person or upon its own authority at any time and in any manner it deems appropriate to determine the condition and welfare of the respondent or protected person and to inquire into the proper performance of the duties of a fiduciary appointed under the provisions of this chapter.

(2) A court having jurisdiction over a protective proceeding in which the respondent or protected person is a minor shall consider and apply all relevant provisions of the Indian Child Welfare Act codified at 25 U.S.C. sections 1901 et seq.

(3) A court having jurisdiction over a protective proceeding may:

(a) Compel the attendance of any person, including respondents, protected persons,

fiduciaries and any other person who may have knowledge about the person or estate of a respondent or protected person. The court may require those persons to respond to inquiries and produce documents that are subject to discovery under ORCP 36.

(b) Appoint counsel for a respondent or protected person.

(c) Appoint investigators, visitors and experts to aid the court in the court's investigation.

(d) Exercise jurisdiction over any transaction entered into by a fiduciary to determine if a conflict of interest existed and enter an appropriate judgment with respect to the transaction.

(e) Surcharge a surety for any loss caused by failure of a fiduciary to perform a fiduciary duty or any other duty imposed by this chapter, including a surcharge for attorney fees incurred by a respondent or protected person by reason of the failure.

(f) Require immediate delivery of a protected person or property of the protected person, including records, accounts and documents relating to that property, to the court or to a place it designates.

(g) Require the fiduciary to produce any and all records that might provide information about the treatment or condition of the protected person or property of the protected person.

(h) Remove a fiduciary whenever that removal is in the best interests of the protected person.

(i) Appoint a successor fiduciary when a fiduciary has died, resigned or been removed.

(j) Require a respondent or protected person to submit to a physical or mental examination pursuant to ORCP 44.

(k) Make provisions for parenting time or visitation or order support for any minor who is a respondent or protected person in a protective proceeding.

(L) Impose any conditions and limitations upon the fiduciary that the court considers appropriate, including limitations on the duration of the appointment. Any conditions or limitations imposed on the fiduciary must be reflected in the letters of appointment.

(4) When a person files a petition or motion for a support order under subsection (3)(k) of this section:

(a) The person shall state in the petition or motion, to the extent known:

(A) Whether there is pending in this state or any other jurisdiction any type of support proceeding involving the minor, including a proceeding brought under ORS 25.287, 107.085, 107.135, 107.431, 108.110, 109.100, 109.103, 109.165, 416.400 to 416.465, 419B.400 or 419C.590 or ORS chapter 110; and

(B) Whether there exists in this state or any other jurisdiction a support order, as defined in ORS 110.303, involving the minor.

(b) The person shall include with the petition or motion a certificate regarding any pending support proceeding and any existing support order. The person shall use a certificate that is in a form established by court rule and include information required by court rule and paragraph (a) of this subsection.

(5) When the court acts upon its own authority to order support under subsection (3)(k) of this section, at least 21 days before the hearing the court shall notify the Administrator of the Division of Child Support of the Department of Justice, or the branch office providing support services to the county where the hearing will be held, of the hearing. Before the hearing the administrator shall inform the court, to the extent known:

(a) Whether there is pending in this state or any other jurisdiction any type of support proceeding involving the minor, including a proceeding brought under ORS 25.287, 107.085, 107.135, 107.431, 108.110, 109.100, 109.103, 109.165, 416.400 to 416.465, 419B.400 or 419C.590 or ORS chapter 110; and

(b) Whether there exists in this state or any other jurisdiction a support order, as defined in ORS 110.303, involving the minor.

(6) The Judicial Department and the Department of Justice may enter into an agreement regarding how the courts give the notice required under subsection (5) of this section to the Department of Justice and how the Department of Justice gives the information described in subsection (5)(a) and (b) to the courts.

(7) If the court finds that a conservator should be appointed, the court may exercise all the powers over the estate and affairs of the protected person that the protected person could exercise if present and not under disability, except the power to make a will. The court shall exercise those powers for the benefit of the protected person and members of the household of the protected person.

(8) The powers of the court in protective proceedings may be exercised by the court directly or through a fiduciary. [1995 c.664 §5; 1997 c.707 §27; 2003 c.116 §11; 2009 c.179 §24]

125.030 Use of limited judgment in protective proceedings. (1) The appointment of a fiduciary in a protective proceeding shall be made by limited judgment.

(2) The court in a protective proceeding may enter a limited judgment only for the following decisions of the court:

(a) A decision on an objection to an accounting.

(b) A decision on placement of a protected person.

(c) A decision on the sale of the residence of a protected person.

(d) A decision on a payment that is authorized or subject to approval under ORS 125.095.

(e) Such decisions of the court as may be specified by rules or orders of the Chief Justice of the Supreme Court under ORS 18.028.

(3) A court may enter a limited judgment under subsection (2) of this section only if the court determines that there is no just reason for delay. The judgment document need not reflect the court's determination that there is no just reason for delay. [2005 c.568 §36; 2009 c.50 §2]

PROCEDURE IN PROTECTIVE PROCEEDINGS

125.050 Application of ORCP and Oregon Evidence Code. Except as otherwise provided by this chapter, the Oregon Rules of Civil Procedure and the Oregon Evidence Code apply in protective proceedings. [1995 c.664 §6]

125.055 Petitions in protective proceedings. (1) A petition in a protective proceeding that seeks the appointment of a fiduciary must designate the type of fiduciary that the petitioner seeks to have appointed. If the petition does not request the appointment of a fiduciary, or if the petition requests both the appointment of a fiduciary and some other protective order, the petition must contain a statement of the nature of the protective order requested. The caption of the petition must reflect the type of fiduciary whose appointment is requested or, if the appointment of a fiduciary is not requested, the nature of the protective order requested. An original and duplicate copy of the petition must be filed with the court.

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

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

(b) The interest of the petitioner.

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

(d) A statement as to whether the person nominated to be fiduciary has been convicted of a crime, has filed for or received protection under the bankruptcy laws or has had a license revoked or canceled that was required by the laws of any state for the practice of a profession or occupation. If the nominated person has been convicted of a crime, filed for or received protection under bankruptcy laws or had a professional or occupational license revoked or canceled, the petition shall contain a statement of the circumstances surrounding those events. If the person nominated is not the petitioner, the statement must indicate that the person nominated is willing and able to serve.

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

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

(g) The factual information that supports the request for the appointment of a fiduciary or entry of other protective order, and the names and addresses of all persons who have information that would support a finding that an adult respondent is incapacitated or financially incapable.

(h) A statement that indicates whether the nominated person intends to place the respondent in a mental health treatment facility, a nursing home or other residential facility.

(i) A general description of the estate of the respondent and the respondent's sources of income and the amount of that income.

(j) A statement indicating whether the person nominated as fiduciary is a public or private agency or organization that provides services to the respondent or an employee of a public or private agency or organization that provides services to the respondent.

(3) In addition to the requirements of subsection (2) of this section, if a petition seeks appointment of a guardian, the petition must contain a statement on whether the guardian will exercise any control over the estate of the respondent. If the guardian will exercise any control over the estate of the respondent, the petition must contain a statement of the monthly income of the respondent, the sources of the respondent's income, and the amount of any moneys that the guardian will be holding for the respondent at the time of the appointment. If the petition seeks the appointment of a guardian for an adult respondent or of a temporary fiduciary who will exercise the powers of a guardian for an adult respondent, the petition must contain a statement notifying the court that a visitor must be appointed.

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

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

(6) The court shall review a petition seeking appointment of a guardian and shall dismiss the proceeding without prejudice, or require that the petition be amended, if the court determines that the petition does not meet the requirements of this section. [1995 c.664 §7; 1997 c.717 §4; 2003 c.227 §3]

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

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

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

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

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

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

(e) Any person who has been nominated as fiduciary or appointed to act as fiduciary for the respondent by a court of any state, any trustee for a trust established by or for the respondent, any person appointed as a health care representative under the provisions of ORS 127.505 to 127.660 and any person acting as attorney-in-fact for the respondent under a power of attorney.

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

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

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

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

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

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

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

(m) Any other person that the court requires.

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

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

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

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

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

(e) If the protected person is committed to the legal and physical custody of the Department

of Corrections, the Attorney General and the superintendent or other officer in charge of the facility in which the protected person is confined.

(f) Any other person that the court requires.

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

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

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

(7) In addition to the requirements of subsection (2) of this section, notice of the filing of a petition for the appointment of a guardian for a person who is alleged to be incapacitated must be given by the petitioner to the following persons:

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

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

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

(8) In addition to the requirements of subsection (3) of this section, in a protective proceeding in which a guardian has been appointed, notice of the motions specified in subsection (3) of this section must be given by the person making the motion to the following persons:

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

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

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

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

(10) The requirement that notice be served on an attorney for a respondent or protected person under subsection (7)(a) or (8)(a) of this section does not impose any responsibility on the attorney receiving the notice to represent the respondent or protected person in the protective proceeding. [1995 c.664 §8; 1997 c.717 §5; 1999 c.122 §3; 1999 c.775 §2; 2001 c.900 §22; 2003 c.143 §3; 2005 c.22 §98; 2005 c.381 §22; 2005 c.498 §2; 2009 c.595 §85; 2011 c.595 §127]

Note: Section 128, chapter 595, Oregon Laws 2011, provides:

Sec. 128. The amendments to ORS 125.060 by section 127 of this 2011 Act apply only to

proceedings commenced on or after October 1, 2011. [2011 c.595 §128]

125.065 Manner of giving notice. (1) Notice of the filing of a petition must be personally served on any respondent who has attained 14 years of age. Notice of a petition must be personally served on the parents of a respondent if the petition is based on the fact that the respondent is a minor. The notice may not be served on the respondent by the visitor appointed by the court. The notice shall be written in language reasonably understandable by the respondent. The notice must be printed in type size equal to at least 12-point type.

(2) Except as provided in subsection (1) of this section, the notices required under ORS 125.060 may be mailed to the last-known address of the person. If the address or identity of any person is not known and cannot be ascertained with reasonable diligence, notice of the filing of a petition may be given by publishing at least once a week for three consecutive weeks a copy of the notice in a newspaper having general circulation in the county where the hearing is to be held. The last publication of the notice must be at least 15 days before the final date for the filing of objections.

(3) The date of personal service or mailing under this section must be at least 15 days before the final date for the filing of objections to the petition or motion. If the proceedings are subject to the Uniform Child Custody Jurisdiction and Enforcement Act provided for in ORS 109.701 to 109.834, the date of service or mailing must be at least 21 days before the final date for the filing of objections to the petition or motion.

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

(5) Proof of the giving of notice must be filed in the proceeding before the court enters any order on a petition or motion. [1995 c.664 §9; 1999 c.649 §53]

125.070 Contents of notice. (1) The notice required by ORS 125.060 must contain the following:

(a) The name, address and telephone number of the petitioner or the person making the motion, and the relationship of the petitioner or person making the motion to the respondent.

(b) A copy of the petition or motion.

(c) A statement on where objections may be made or filed and the deadline for making or filing those objections.

(d) If a hearing has been set, the date, time and place of the hearing.

(2) In addition to the requirements of subsection (1) of this section, a notice of a petition for the appointment of a conservator for a respondent who is alleged to be financially incapable or a notice of a petition for the appointment of a guardian or conservator for a respondent who is a minor that is served on the respondent must contain the following:

(a) An explanation of the purpose and possible consequences of the petition.

(b) A statement that financial resources of the respondent may be used to pay court-approved expenditures of the proceeding.

(c) Information regarding any free or low-cost legal services and other relevant services available in the area.

(d) Information on any appointment of a visitor and the role of the visitor.

(e) A statement of the rights of the respondent as follows:

(A) The right to be represented by an attorney.

(B) The right to file a written or oral objection.

- (C) The right to request a hearing.
- (D) The right to present evidence and cross-examine witnesses at any hearing.
- (E) The right to request at any time that the power of the fiduciary be limited by the court.
- (F) The right to request at any time the removal of the fiduciary or a modification of the protective order.

(3) In addition to the requirements of subsection (1) of this section, a notice of a petition for the appointment of a guardian for a respondent who is alleged to be incapacitated must contain a notice, printed in 14-point type, in substantially the following form:

NOTICE TO RESPONDENT

To: Respondent _____:

_____, Petitioner, who is your _____ (relationship to respondent), or that is an agency or business that provides guardianship services, has asked a judge for the power to make decisions for you. The judge has been asked to give this person, agency or business the authority to make the following decisions for you (mark the appropriate spaces):

Medical and health care decisions, including decisions on which doctors you will see and what medications and treatments you will receive.

Residential decisions, including decisions on whether you can stay where you are currently living or be moved to another place.

Financial decisions, including decisions on paying your bills and decisions about how your money is spent.

Other decisions: _____
_____.

YOUR MONEY MAY BE USED IF THE JUDGE APPOINTS A GUARDIAN FOR YOU. YOU MAY BE ASKED TO PAY FOR THE TIME AND EXPENSES OF THE GUARDIAN, THE TIME AND EXPENSES OF THE PETITIONER'S ATTORNEY, THE TIME AND EXPENSES OF YOUR ATTORNEY, FILING FEES AND OTHER COSTS.

YOU MUST TELL SOMEONE AT THE COURTHOUSE BEFORE _____ (DATE) IF YOU OPPOSE HAVING SOMEONE ELSE MAKE THESE DECISIONS FOR YOU.

OBJECTIONS:

You can write to the judge if you do not want someone else making decisions for you. The judge's address is: _____.

You have the right to object to the appointment of a guardian by saying you want to continue to make your own decisions. If you do not want another person, agency or business making decisions for you, you can object. If you do not want _____ (Proposed Guardian) to make these decisions for you, you can object. If you do not want your money to be used to pay for these expenses, you can object.

You can object any time after the judge has appointed a guardian. You can ask the judge at any time to limit the kinds of decisions that the guardian makes for you so that you can make more decisions for yourself. You can also ask the judge at any time to end the guardianship.

THE HEARING:

The judge will hold a hearing if you do not want a guardian, do not want this particular person to act as your guardian or do not want your money used this way. At the hearing, the judge will listen to what you and others have to say about whether you need someone else to make decisions for you, who that person should be and whether your money should be spent on these things. You can have your witnesses tell the judge why you do not need a guardian and you can bring in records and other information about why you think that you do not need a guardian. You can ask your witnesses questions and other witnesses questions.

THE COURT VISITOR:

The judge will appoint someone to investigate whether you need a guardian to make decisions for you. This person is called a “visitor.” The visitor works for the judge and does not work for the person who filed the petition asking the judge to appoint a guardian for you, for you or for any other party. The visitor will come and talk to you about the guardianship process, about whether you think that you need a guardian and about who you would want to be your guardian if the judge decides that you need a guardian. The visitor will talk to other people who have information about whether you need a guardian. The visitor will make a report to the judge about whether what the petition says is true, whether the visitor thinks that you need a guardian, whether the person proposed as your guardian is able and willing to be your guardian, who would be the best guardian for you and what decisions the guardian should make for you. If there is a hearing about whether to appoint a guardian for you, the visitor will be in court to testify.

You can tell the visitor if you don’t want someone else making decisions for you when the visitor comes to talk with you about this matter.

LEGAL SERVICES:

You can call a lawyer if you don’t want someone else making decisions for you. If you don’t have a lawyer, you can ask the judge whether a lawyer can be appointed for you.

There may be free or low-cost legal services or other relevant services in your local area that may be helpful to you in the guardianship proceeding. For information about these services, you can call the following telephone numbers _____ and ask to talk to people who can help you find legal services or other types of services.

OBJECTION FORM:

You can mark the blue sheet (Respondent’s Objection) that is attached to this form if you do not want someone else to make your decisions for you. You can give the blue sheet to the visitor when the visitor comes to talk with you about this, you can show it to your attorney or you can mail it to the judge.

(4) In addition to the requirements of subsection (1) of this section, a notice of a petition that is served on a respondent who is alleged to be incapacitated must contain an objection form, printed on blue paper in 14-point type, in substantially the following form:

IN THE _____ COURT
OF THE STATE OF OREGON

FOR THE COUNTY OF _____

(Case Title))
)
)
)
)
)
)
)

Case No. _____

RESPONDENT'S
OBJECTION

I object to the petition for the following reasons:

- I do not want anyone else making any of my decisions for me.
- I do not want _____ making any decisions for me.
- I do not want _____ to make the following decisions for me:

(Signature of Respondent)

(Date)

GIVE TO THE VISITOR OR MAIL TO:

(5) In addition to the requirements of subsection (1) of this section, a notice of a petition provided to a person other than the respondent must contain a statement as follows:

NOTICE: If you wish to receive copies of future filings in this case, you must inform the judge and the person named as petitioner in this notice. You must inform the judge by filing a request for notice and paying any applicable fee. The request for notice must be in writing, must clearly indicate that you wish to receive future filings in the proceedings and must contain your name, address and phone number. You must notify the person named as petitioner by mailing a copy of the request to the petitioner. Unless you take these steps, you will receive no further copies of the filings in the case.

[1995 c.664 §10; 1999 c.775 §3; 2001 c.416 §1]

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

- (a) Any person entitled to receive notice under ORS 125.060.
- (b) Any stepparent or stepchild of the respondent or protected person.
- (c) Any other person the court may allow.

(2) Objections to a petition may be either written or oral. Objections to a motion must be in writing. Objections to a petition or to a motion must be made or filed with the court within 15 days after notice of the petition or motion is served or mailed in the manner prescribed by ORS 125.065. The court shall designate a place where oral objections may be made. If a person appears within the time allowed at the place designated by the court for the purpose of making oral objections, the clerk of the court shall provide a means of reducing the oral objections to a signed writing for the purpose of filing the objection.

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

(4) Notwithstanding ORS 21.170, the court shall not charge or collect any fee from a respondent or protected person for the filing of objections under the provisions of this section or for the filing of any motion by a respondent or protected person.

(5) The court for good cause shown may provide for a different method or time of giving notice under subsection (3) of this section. [1995 c.664 §11; 2011 c.595 §129]

125.080 Hearing. (1) The court may require that a hearing be held on any petition or motion in a protective proceeding.

(2) A hearing must be held on a petition or motion if an objection is filed to the petition or motion and the objection is not withdrawn before the time scheduled for the hearing.

(3) The respondent or protected person may appear at a hearing in person or by counsel.

(4) If the court requires that a hearing be held on a petition, or a hearing is otherwise required under this section, the court may appoint counsel for the respondent unless the respondent is already represented by counsel. [1995 c.664 §12; 1999 c.775 §1; 2003 c.227 §4]

125.085 Motions after appointment of a fiduciary. (1) The court may remove a fiduciary on the motion of any person who is entitled to file an objection to a petition under the provisions of ORS 125.075, or upon the court's own motion.

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

(3) Upon motion by any person who is entitled to file an objection to a petition under the provisions of ORS 125.075, or upon the court's own motion, the court may order a modification of the powers or authority of the fiduciary or termination of the protective proceedings. [1995 c.664 §13]

125.090 Termination of proceedings. (1) A protected person is entitled to the same rights and procedures provided in the original proceedings when a motion to terminate the protective proceeding is filed and a fiduciary opposes the motion. The fiduciary has the burden of proving

by clear and convincing evidence that a protected person continues to be incapacitated or financially incapable if a motion to terminate a protective proceeding is filed and the fiduciary opposes the motion. A visitor must be appointed if a motion for termination of a guardianship is filed and objections are filed to the motion. A visitor may be appointed if a motion for termination of a conservatorship is filed.

(2) The court may terminate protective proceedings upon motion after determining any of the following:

(a) The appointment of a fiduciary or other protective order was made because the protected person was a minor, and the protected person has attained the age of majority.

(b) The appointment of a fiduciary or other protective order was made because the protected person was incapacitated, and the protected person is no longer incapacitated.

(c) The appointment of a fiduciary or other protective order was made because the protected person was financially incapable, and the protected person is no longer financially incapable or the conditions of ORS 125.535 have been met.

(d) The protected person has died.

(e) The best interests of the protected person would be served by termination of the proceedings.

(3) The court shall terminate a protective proceeding by entry of a general judgment. [1995 c.664 §14; 2005 c.568 §37]

125.095 Compensation and expenses payable in protective proceedings. (1) Funds of the protected person may be used to pay reasonable compensation to any visitor, attorney, physician, fiduciary or temporary fiduciary for services rendered in the protective proceeding or for services rendered on behalf of the fiduciary or protected person.

(2) Prior court approval is required before the payment of the fees of any visitor or physician if the fees are incurred for services relating to proceedings arising out of the filing of an objection to a petition or motion.

(3) Prior court approval is required before payment of compensation to a fiduciary or to the attorneys for a fiduciary, except that prior court approval is not required before payment of compensation to a conservator if the conservator is a trust company that has complied with ORS 709.030, or if the conservator is the Department of Veterans' Affairs. [1995 c.664 §15; 1997 c.631 §409; 2005 c.625 §65]

VISITORS

125.150 Appointment of visitors. (1) The court shall appoint a visitor upon the filing of a petition in a protective proceeding that seeks the appointment of a guardian for an adult respondent or temporary fiduciary who will exercise the powers of a guardian for an adult respondent. The court may appoint a visitor in any other protective proceeding or in a proceeding under ORS 109.329.

(2) A visitor may be an officer, employee or special appointee of the court. The person appointed may not have any personal interest in the proceedings. The person appointed must have training or expertise adequate to allow the person to appropriately evaluate the functional capacity and needs of a respondent or protected person, or each petitioner and the person to be adopted under ORS 109.329. The court shall provide a copy of the petition and other filings in the proceedings that may be of assistance to the visitor.

(3) A visitor appointed by the court under this section shall interview a person nominated or appointed as fiduciary and the respondent or protected person, or each petitioner and the person to be adopted under ORS 109.329, personally at the place where the respondent or protected person, or each petitioner or the person to be adopted under ORS 109.329, is located.

(4) Subject to any law relating to confidentiality, the visitor may interview any physician or psychologist who has examined the respondent or protected person, or each petitioner under ORS 109.329, the person or officer of the institution having the care, custody or control of the respondent or protected person, or each petitioner under ORS 109.329, and any other person who may have relevant information.

(5) If requested by a visitor under subsection (4) of this section, a physician or psychologist who has examined the respondent or protected person, or each petitioner under ORS 109.329, may, with patient authorization or in response to a court order in accordance with ORCP 44 or a subpoena under ORCP 55, provide any relevant information the physician or psychologist has regarding the respondent or protected person, or each petitioner under ORS 109.329.

(6) A visitor shall determine whether it appears that the respondent or protected person, or each petitioner or the person to be adopted under ORS 109.329, is able to attend the hearing and, if able to attend, whether the respondent or protected person, or each petitioner or the person to be adopted under ORS 109.329, is willing to attend the hearing.

(7) If a petition is filed seeking the appointment of a guardian for an adult respondent, a visitor shall investigate the following matters:

(a) The inability of the respondent to provide for the needs of the respondent with respect to physical health, food, clothing and shelter;

(b) The location of the respondent's residence and the ability of the respondent to live in the residence while under guardianship;

(c) Alternatives to guardianship considered by the petitioner and reasons why those alternatives are not available;

(d) Health or social services provided to the respondent during the year preceding the filing of the petition, when the petitioner has information as to those services;

(e) The inability of the respondent to resist fraud or undue influence; and

(f) Whether the respondent's inability to provide for the needs of the respondent is an isolated incident of negligence or improvidence, or whether a pattern exists.

(8) If a petition is filed seeking the appointment of a fiduciary, a visitor shall determine whether the respondent objects to:

(a) The appointment of a fiduciary; and

(b) The nominated fiduciary or prefers another person to act as fiduciary.

(9) If a petition is filed seeking the appointment of a conservator in addition to the appointment of a guardian, a visitor shall investigate whether the respondent is financially incapable. The visitor shall interview the person nominated to act as conservator and shall interview the respondent personally at the place where the respondent is located.

(10) A visitor shall determine whether the respondent or protected person, or each petitioner or the person to be adopted under ORS 109.329, wishes to be represented by counsel and, if so, whether the respondent or protected person, or each petitioner or the person to be adopted under ORS 109.329, has retained counsel and, if not, the name of an attorney the respondent or protected person, or each petitioner or the person to be adopted under ORS 109.329, wishes to retain.

(11) If the respondent or protected person, or each petitioner or the person to be adopted under ORS 109.329, has not retained counsel, a visitor shall determine whether the respondent or protected person, or each petitioner or the person to be adopted under ORS 109.329, desires the court to appoint counsel.

(12) If the respondent or protected person, or each petitioner or the person to be adopted under ORS 109.329, does not plan to retain counsel and has not requested the appointment of counsel by the court, a visitor shall determine whether the appointment of counsel would help to resolve the matter and whether appointment of counsel is necessary to protect the interests of the respondent or protected person, or each petitioner or the person to be adopted under ORS 109.329. [1995 c.664 §16; 2003 c.89 §1; 2003 c.227 §5; 2003 c.579 §§3,4]

125.155 Visitor's report. (1) A visitor shall file a report in writing with the court within 15 days after the visitor is appointed. The court may grant additional time for filing the visitor's report upon a showing of necessity and good cause.

(2) The report of the visitor appointed at the time a petition is filed requesting the appointment of a fiduciary must include the following:

(a) A statement of information gathered by the visitor relating to the correctness of the allegations contained in the petition, whether the appointment of a fiduciary is necessary and whether the nominated fiduciary is qualified and willing to serve.

(b) The name, address and telephone number of each person interviewed for the report, the date of the interview and the relationship of the person interviewed to the respondent.

(c) The recommendations of the visitor with regard to the suitability of the nominated fiduciary, any limitations that should be imposed on the fiduciary and the need for further evaluation.

(d) The recommendation of the visitor on any issue the court specifically asks the visitor to investigate regarding the propriety of appointing a fiduciary for the respondent.

(e) The visitor's determinations required by ORS 125.150.

(f) Any express communication made by the respondent relating to the desires of the respondent regarding representation by counsel.

(g) Any express communication made by the respondent with respect to whether the respondent is willing to attend a hearing, wishes to contest the appointment of a fiduciary, objects to the nominated fiduciary or prefers another person act as fiduciary.

(3) The State Court Administrator may prescribe one or more forms to be used by visitors for filing their reports.

(4) As soon as possible after a report is filed with the court under the provisions of this section, the clerk of the court shall mail copies of the report to any person who has filed with the court a specific request for a copy of the report. A request made under ORS 125.060 (3)(b) does not meet the requirements of this subsection unless the request specifically requests a copy of the visitor's report.

(5) The visitor must be present at the hearing on any objections to the appointment of a fiduciary. A visitor is entitled to reasonable compensation for attendance at the hearing. The court shall notify the visitor of the time and place of any hearing on objections to the appointment. [1995 c.664 §17; 2003 c.227 §6]

125.160 Subsequent appointment of visitor. At any time after the appointment of a fiduciary, the court may appoint a visitor. The court may require the visitor to perform any duty

the visitor could have performed if appointed at the time the fiduciary was appointed, including interviewing relevant persons, examining relevant records, reporting in writing to the court and being present at any hearing. [1995 c.664 §18]

125.165 Qualifications and standards for visitors. (1) A presiding judge shall by court order establish:

(a) Qualifications for persons serving as visitors for the court, in addition to those qualifications established by this section; and

(b) Standards and procedures to be used by visitors in the performance of their duties.

(2) A visitor may be an employee of the court. The visitor may not have any personal interest in the respondent or protected person, or any pecuniary or financial interest in the proceedings, if those interests could compromise or otherwise affect the decisions of the visitor. A visitor may not receive compensation for services rendered as a fiduciary for two or more protected persons at the same time who are not related to the fiduciary.

(3) A visitor must:

(a) Have the training and expertise adequate to allow the person to conduct the interviews and make the recommendations required under ORS 125.150 and 125.155, to communicate with, assess and interact with respondents and protected persons, and to perform the other duties required of a visitor; and

(b) Demonstrate sufficient knowledge of the law so as to be able to inform a respondent or protected person of the nature and effect of a protective proceeding, to inform a respondent or protected person of the rights of the respondent or protected person in the protective proceeding, to answer the questions of a respondent or protected person and to inform fiduciaries concerning their powers and duties. [1999 c.775 §10; 2003 c.227 §2]

125.170 Payment and reimbursement for visitor services. (1) Not more than once each calendar year, the court may charge a respondent or protected person for any visitor services provided during the year. The court may order reimbursement to the state from the assets of the respondent or protected person for the cost of any interview or report unless the court finds that the assessment would impose a hardship on the respondent or protected person. If the respondent or protected person is receiving public assistance, there is a rebuttable presumption that charging a respondent or protected person for the services of a visitor would impose a hardship.

(2) The presiding judge by court order shall establish fees for visitors conducting interviews and preparing reports.

(3) All amounts collected under this section in reimbursement for visitor services shall be forwarded to the State Court Administrator and are continuously appropriated to the State Court Administrator. Funds appropriated to the State Court Administrator under this section may be used by the State Court Administrator for the purpose of funding visitor services provided under ORS 125.150 and 125.155. [1999 c.775 §9; 2003 c.227 §1]

FIDUCIARIES GENERALLY

125.200 Preferences in appointing fiduciary. The court shall appoint the most suitable person who is willing to serve as fiduciary after giving consideration to the specific circumstances of the respondent, any stated desire of the respondent, the relationship by blood or marriage of the person nominated to be fiduciary to the respondent, any preference expressed by

a parent of the respondent, the estate of the respondent and any impact on ease of administration that may result from the appointment. [1995 c.664 §19]

125.205 Persons not qualified to act as fiduciary. (1) A person is not qualified to serve as a fiduciary if the person:

- (a) Is incapacitated, financially incapable or a minor;
- (b) Is acting as a health care provider, as defined in ORS 127.505, for the protected person;

or

- (c) Is the protected person's parent or former guardian and:

(A) At any time while the protected person was under the care, custody or control of the person, a court entered an order:

- (i) Taking the protected person into protective custody under ORS 419B.150; or
- (ii) Committing the protected person to the legal custody of the Department of Human Services for care, placement and supervision under ORS 419B.337; and

(B) The court entered a subsequent order that:

- (i) The protected person should be permanently removed from the person's home, or

continued in substitute care, because it was not safe for the protected person to be returned to the person's home, and no subsequent order of the court was entered that permitted the protected person to return to the person's home before the protected person's wardship was terminated under ORS 419B.328; or

- (ii) Terminated the person's parental rights under ORS 419B.500 and 419B.502 to 419B.524.

(2) A protected person, while not incapacitated, may petition the court to remove a prohibition contained in subsection (1)(c) of this section. [1995 c.664 §20; 2011 c.194 §1]

125.210 Notice to court of criminal conviction, revocation or cancellation of occupational license or bankruptcy proceedings. (1) A person nominated as a fiduciary who has been convicted of a crime, has filed for or received protection under the bankruptcy laws or has had a license revoked or canceled that was required by the laws of any state for the practice of a profession or occupation must inform the court of the circumstances of those events before the person is appointed. If the person nominated to be a fiduciary is also the petitioner, the information required by this section may be provided in the petition for appointment of a fiduciary in the manner specified by ORS 125.055.

(2) A person who has been appointed as a fiduciary who is convicted of a crime, files for or receives protection under the bankruptcy laws or has a license revoked or canceled that is required by the laws of any state for the practice of a profession or occupation must inform the court of the circumstances of those events immediately.

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

(4) The court may decline to appoint a person as fiduciary, or may remove a person as fiduciary, if the person fails to comply with the provisions of this section. [1995 c.664 §21]

125.215 Acceptance of appointment as fiduciary; notice of proceedings to fiduciary. (1) If the person filing a petition in a protective proceeding is also nominated in the petition as fiduciary for the respondent, the signature of the petitioner on the petition acts as acceptance of appointment upon entry of an order appointing the petitioner as fiduciary. If the person

nominated as a fiduciary is not the petitioner, the person nominated must file an acceptance of the appointment before the entry of the order appointing the fiduciary.

(2) A fiduciary must promptly file with the court any change in the name, residence or post-office address of the fiduciary.

(3) Subject to ORS 125.800 to 125.852 for adults as defined in ORS 125.802, the court has personal jurisdiction over any person who accepts appointment as a fiduciary for the purpose of any matter relating to the protective proceeding, whether the person is a resident or nonresident of this state.

(4) Notice of an objection, motion or other matter in a protective proceeding may be personally served on the fiduciary or mailed to the fiduciary or the fiduciary's attorney by ordinary mail at the address listed in the court records and to any address for the fiduciary or the fiduciary's attorney known to the person giving notice. [1995 c.664 §22; 2009 c.179 §25]

125.220 [1995 c.664 §23; repealed by 1999 c.774 §1 (125.221 enacted in lieu of 125.220)]

125.221 Conflicts of interest. (1) A fiduciary may employ a person in which the fiduciary has a pecuniary or financial interest only after disclosing the nature of the interest to the court if the person is employed for the purpose of providing direct services to the protected person or for the purpose of providing services to the fiduciary that directly affect the protected person. Before the person is employed, the fiduciary must provide the court with the following:

(a) A full and accurate disclosure of the pecuniary or financial interest of the fiduciary in the person.

(b) A full and accurate disclosure of the services to be performed by the person.

(c) A full and accurate disclosure of the anticipated costs to the estate in using the person to provide the services.

(2) In addition to the disclosures required by subsection (1) of this section, after making such inquiry as the court deems appropriate, the court may require additional disclosures for the purpose of assessing whether the pecuniary or financial interest of the fiduciary could compromise or otherwise affect decisions made by the fiduciary in carrying out the duties of the fiduciary.

(3) The continuing authority of a court over protective proceedings under ORS 125.025 includes the authority to supervise and inquire into:

(a) Whether the fiduciary by employing a person in which the fiduciary has a pecuniary or financial interest is acting reasonably to accomplish the purposes for which the fiduciary was appointed.

(b) Whether the employment of the person by the fiduciary is necessary to provide the services efficiently and effectively.

(c) The extent that the pecuniary or financial interest of the person employed by the fiduciary could compromise or otherwise affect the decisions made by the fiduciary in carrying out the duties of the fiduciary.

(4) In addition to the disclosures required by subsections (1) and (2) of this section, prior court approval is required for payment of compensation to a person who is the spouse, parent or child of the fiduciary or to a business entity in which the spouse, parent or child of the fiduciary has an ownership interest and that is employed by the fiduciary to provide direct services to a protected person or to provide services to the fiduciary that directly affect the protected person. The fiduciary must provide the court with the following information:

(a) The specific services to be provided;
(b) The qualifications of the person providing the services;
(c) The rate of compensation charged by the person; and
(d) Any other information relevant to either the person providing the services or the services being provided to the protected person, including, but not limited to, loss of a professional license or a criminal conviction.

(5) The court may not approve any fees or expenses requested by the fiduciary to the extent that the combined fees of the fiduciary and the person employed by the fiduciary under this section exceed the amount the court finds would have been appropriate for payment to the fiduciary if the fiduciary had provided the services alone.

(6) A fiduciary has a pecuniary or financial interest in another person for the purposes of this section if the fiduciary, or any person related to, employed by or affiliated with the fiduciary has:

- (a) Any direct or indirect ownership interest in the person;
- (b) A business association with the person; or
- (c) Any financial involvement with the person.

(7) A fiduciary has a pecuniary or financial interest in another person for the purposes of this section if the fiduciary, or any person related to, employed by or affiliated with the fiduciary, receives remuneration or any other financial benefit from the person, without regard to whether that remuneration or benefit is directly tied to the services provided to the fiduciary or protected person.

(8) In addition to the grounds specified in subsections (6) and (7) of this section, a fiduciary has a pecuniary or financial interest in another person for the purposes of this section if the relationship between the fiduciary and other person is such that the relationship could compromise or otherwise affect decisions made by the fiduciary in carrying out the duties of the fiduciary.

(9) A fiduciary employs a person for the purposes of this section whether the person is engaged as an employee or as an independent contractor. [1999 c.774 §2 (enacted in lieu of 125.220); 2003 c.392 §1]

125.225 Removal of fiduciary. (1) A court shall remove a fiduciary whenever that removal is in the best interests of the protected person.

(2) In addition to any other grounds, the court may remove a conservator if the conservator fails to use good business judgment and diligence in the management of the estate under the control of the conservator. The court may apply a higher standard of care to a conservator who claims to have greater than ordinary skill or expertise.

(3) The court may remove a guardian if the guardian places the protected person in a mental health treatment facility, a nursing home or other residential facility and:

- (a) Failed to disclose in the petition for appointment that the guardian intended to make the placement; or
- (b) Failed to comply with ORS 125.320 (3) before making the placement.

(4) On termination of the authority of a fiduciary, an interim fiduciary may be appointed by the court to serve for a period not to exceed 60 days. An interim fiduciary under this subsection may be appointed by the court without the appointment of a visitor, additional notices or any other additional procedure, except as may be determined necessary by the court.

(5) Upon termination of the authority of a fiduciary, the court may appoint a successor fiduciary. A petition for appointment as successor fiduciary must be filed in the same manner as

provided for an original petition, and is subject to all provisions applicable to an original petition for the appointment of a fiduciary except:

(a) No filing fee shall be charged or collected for the filing of a petition for the appointment of a successor fiduciary; and

(b) The court may enter an order waiving the requirement of appointing a visitor if the termination of the fiduciary's authority results from the resignation or death of the fiduciary. [1995 c.664 §24]

125.230 Termination of fiduciary's authority; discharge of fiduciary. (1) Except as provided in subsection (3) of this section, a fiduciary's authority terminates upon the death, resignation or removal of the fiduciary or upon the protected person's death. If the fiduciary is a guardian appointed solely by reason of the minority of the protected person, the fiduciary's authority terminates upon the protected person attaining 18 years of age.

(2) Resignation or removal of a fiduciary does not discharge the fiduciary until a final report or accounting has been approved by the court, any surety exonerated and the fiduciary discharged by order of the court.

(3) A guardian retains the authority to direct disposition of the remains of a deceased protected person if the guardian is unaware of any contact during the 12-month period immediately preceding the death of the protected person between the protected person and any person with priority over the fiduciary to control disposition of the remains under ORS 97.130 or to make an anatomical gift under ORS 97.965. [1995 c.664 §25; 1997 c.472 §11; 2007 c.681 §26]

125.235 Liability of fiduciary. A fiduciary is not personally liable to third persons for acts of the protected person solely by reason of being appointed fiduciary. [1995 c.664 §26]

125.240 Professional fiduciaries. (1) If a petition seeks the appointment of a professional fiduciary as described in subsection (5) of this section, the petition must contain the following information in addition to that information required under ORS 125.055:

(a) A description of the events that led to the involvement of the professional fiduciary in the case.

(b) The professional fiduciary's educational background and professional experience.

(c) The fees charged by the professional fiduciary and whether the fees are on an hourly basis or are based on charges for individual services rendered.

(d) The names of providers of direct services to protected persons that are repeatedly used by the professional fiduciary under contract.

(e) The disclosures required under ORS 125.221 if the person nominated to act as fiduciary will employ a person in which the nominated person has a pecuniary or financial interest.

(f) The number of protected persons for whom the person performs fiduciary services at the time of the petition.

(g) Whether the professional fiduciary has ever had a claim against the bond of the fiduciary and a description of the circumstances causing the claim.

(h) Whether the professional fiduciary or any staff with responsibility for making decisions for clients or for management of client assets has ever filed for bankruptcy and the date of filing.

(i) Whether the professional fiduciary or any staff with responsibility for making decisions for clients or for management of client assets has ever been denied a professional license that is

directly related to responsibilities of the professional fiduciary, or has ever held a professional license that is directly related to responsibilities of the professional fiduciary that was revoked or canceled. If such a license has been denied, revoked or canceled, the petition must reflect the date of the denial, revocation or cancellation and the name of the regulatory body that denied, revoked or canceled the license.

(j) A statement that the criminal records check required under subsection (2) of this section does not disqualify the person from acting as a fiduciary.

(k) Whether the professional fiduciary and any staff responsible for making decisions for clients or for management of client assets is or has been certified by a national or state association of professional fiduciaries, the name of any such association and whether the professional fiduciary or other staff person has ever been disciplined by any such association and the result of the disciplinary action.

(L) The name, address and telephone number of the individual who is to act as primary decision maker for the protected person and the name of the person with whom the protected person will have personal contact if that person is not the person who will act as primary decision maker for the protected person.

(2)(a) If a petition seeks the appointment of a professional fiduciary as described in subsection (5) of this section, the professional fiduciary and all staff with responsibility for making decisions for clients or for management of client assets must undergo a criminal records check before the court may appoint the professional fiduciary. The results of the criminal records check shall be provided by the petitioner to the court. Results of criminal records checks submitted to the court are confidential, shall be subject to inspection only by the parties to the proceedings and their attorneys, and shall not be subject to inspection by members of the public except pursuant to a court order entered after a showing of good cause. A professional fiduciary must disclose to the court any criminal conviction of the professional fiduciary that occurs after the criminal records check was performed. The criminal records check under this subsection shall consist of a check for a criminal record in the State of Oregon and a national criminal records check if:

(A) The person has resided in another state within five years before the date that the criminal records check is performed;

(B) The person has disclosed the existence of a criminal conviction; or

(C) A criminal records check in Oregon discloses the existence of a criminal record in another jurisdiction.

(b) The requirements of this subsection do not apply to any person who serves as a public guardian or conservator, or any staff of a public guardian or conservator, who is operating under ORS 125.700 to 125.730 or 406.050 and who is otherwise required to acquire a criminal records check for other purposes.

(3)(a) If a petition seeks the appointment of a public guardian and conservator operating under the provisions of ORS 125.700 to 125.730, or the appointment of a conservator under ORS 406.050 (8), the petition need not contain the information described in subsection (1)(d) or (L) of this section.

(b) If a public guardian and conservator operating under the provisions of ORS 125.700 to 125.730 is appointed to act as a fiduciary, or a conservator operating under the authority of ORS 406.050 (8) is appointed, the public guardian or conservator must file with the court within three days after receipt of written notice of the appointment a statement containing the name, address and telephone number of the individual who will act as primary decision maker for the protected

person and the name of the person with whom the protected person will have personal contact if the person named as primary decision maker will not have personal contact with the protected person.

(4) If the court appoints a professional fiduciary as described in subsection (5) of this section, the professional fiduciary must update all information required to be disclosed by subsection (1) of this section and provide a copy of the updated statement upon the request of the protected person or upon the request of any person entitled to notice under ORS 125.060 (3). The professional fiduciary must provide an updated statement without demand to the court, the protected person and persons entitled to notice under ORS 125.060 (3) at any time that there is a change in the information provided under subsection (1)(L) or (3)(b) of this section.

(5) The provisions of this section apply to any person nominated as a fiduciary or serving as a fiduciary who is acting at the same time as a fiduciary for three or more protected persons who are not related to the fiduciary. [1999 c.774 §4; 2001 c.102 §4; 2001 c.104 §37; 2009 c.602 §3]

125.242 Exemptions for financial institutions and trust companies. ORS 125.221 and 125.240 do not apply to a financial institution, as defined in ORS 706.008, or trust company, as defined in ORS 706.008. [1999 c.774 §5]

Note: 125.242 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 125 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

GUARDIANS

125.300 In general. (1) A guardian may be appointed for an adult person only as is necessary to promote and protect the well-being of the protected person. A guardianship for an adult person must be designed to encourage the development of maximum self-reliance and independence of the protected person and may be ordered only to the extent necessitated by the person's actual mental and physical limitations.

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

(3) A protected person retains all legal and civil rights provided by law except those that have been expressly limited by court order or specifically granted to the guardian by the court. Rights retained by the person include but are not limited to the right to contact and retain counsel and to have access to personal records. [1995 c.664 §27]

125.305 Order of appointment. (1) After determining that conditions for the appointment of a guardian have been established, the court may appoint a guardian as requested if the court determines by clear and convincing evidence that:

(a) The respondent is a minor in need of a guardian or the respondent is incapacitated;

(b) The appointment is necessary as a means of providing continuing care and supervision of the respondent; and

(c) The nominated person is both qualified and suitable, and is willing to serve.

(2) The court shall make a guardianship order that is no more restrictive upon the liberty of the protected person than is reasonably necessary to protect the person. In making the order the court shall consider the information in the petition, the report of the visitor, the report of any

physician or psychologist who has examined the respondent, if there was an examination and the evidence presented at any hearing.

(3) The court may require that a guardian post bond.

(4) The Department of Human Services may be appointed guardian of a minor if the minor has no living parents and if no willing, qualified and suitable relative or other person has petitioned the court for appointment as a guardian. [1995 c.664 §28]

125.310 Letters of guardianship. The court shall issue letters of guardianship to the guardian after the filing of any acceptance of the appointment and bond that may be required. A copy of the order appointing the guardian must be attached to the letters of guardianship. Letters of guardianship must be in substantially the following form:

State of Oregon,)
) LETTERS OF
 County of____) GUARDIANSHIP

BY THESE LETTERS OF GUARDIANSHIP be informed:

That on ____ (month) ____ (day), 2____, the _____ Court, ____ County, State of Oregon, appointed _____ (name of guardian) guardian for _____ (name of protected person) and that the named guardian has qualified and has the authority and duties of guardian for the named protected person as provided in the order appointing the guardian, a copy of which is attached to these letters.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed the seal of the court at my office on ____ (month) ____ (day), 2____.

(Seal)
_____, Clerk of the Court
By _____, Deputy

[1995 c.664 §29]

125.315 General powers and duties of guardian. (1) A guardian has the following powers and duties:

(a) Except to the extent of any limitation under the order of appointment, the guardian has custody of the protected person and may establish the protected person’s place of abode within or without this state.

(b) The guardian shall provide for the care, comfort and maintenance of the protected person and, whenever appropriate, shall arrange for training and education of the protected person. Without regard to custodial rights of the protected person, the guardian shall take reasonable care of the person’s clothing, furniture and other personal effects unless a conservator has been appointed for the protected person.

(c) Subject to the provisions of ORS 127.505 to 127.660 and subsection (3) of this section, the guardian may consent, refuse consent or withhold or withdraw consent to health care, as

defined in ORS 127.505, for the protected person. A guardian is not liable solely by reason of consent under this paragraph for any injury to the protected person resulting from the negligence or acts of third persons.

(d) The guardian may:

(A) Make advance funeral and burial arrangements;

(B) Subject to the provisions of ORS 97.130, control the disposition of the remains of the protected person; and

(C) Subject to the provisions of ORS 97.965, make an anatomical gift of all or any part of the body of the protected person.

(e) The guardian of a minor has the powers and responsibilities of a parent who has legal custody of a child, except that the guardian has no obligation to support the minor beyond the support that can be provided from the estate of the minor, and the guardian is not liable for the torts of the minor. The guardian may consent to the marriage or adoption of a protected person who is a minor.

(f) Subject to the provisions of ORS 125.320 (2), the guardian may receive money and personal property deliverable to the protected person and apply the money and property for support, care and education of the protected person. The guardian shall exercise care to conserve any excess for the protected person's needs.

(2) If a conservator has been appointed for the protected person, the guardian may file a motion with the court seeking an order of the court on the duties of the conservator relating to payment of support for the protected person.

(3) A guardian may consent to the withholding or withdrawing of artificially administered nutrition and hydration for a protected person only under the circumstances described in ORS 127.580 (1)(a), (b), (d), (e) or (f) and, if the protected person has a medical condition specified in ORS 127.580 (1)(b), (d), (e) or (f), the condition has been medically confirmed. [1995 c.664 §30; 1997 c.472 §12; 2007 c.230 §1; 2007 c.681 §27]

125.320 Limitations on guardian. (1) A guardian may not authorize the sterilization of the protected person.

(2) A guardian may not use funds from the protected person's estate for room and board that the guardian or guardian's spouse, parent or child have furnished the protected person unless the charge for the service is approved by order of the court before the payment is made.

(3)(a) Before a guardian may place an adult protected person in a mental health treatment facility, a nursing home or other residential facility, the guardian must file a statement with the court informing the court that the guardian intends to make the placement.

(b) Notice of the statement of intent must be given in the manner provided by ORS 125.065 to the persons specified in ORS 125.060 (3).

(c) In addition to the requirements of paragraph (b) of this subsection, notice of the statement of intent must be given in the manner provided by ORS 125.065 by the guardian to the following persons:

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

(B) If the protected person is a resident of a nursing home or residential facility, or if the notice states the intention to place the protected person in a nursing home or residential facility, the office of the Long Term Care Ombudsman.

(C) If the protected person is a resident of a mental health treatment facility or a residential facility for individuals with developmental disabilities, or if the notice states the intention to place the protected person in such a facility, the system described in ORS 192.517 (1).

(d) In addition to the requirements of ORS 125.070 (1), the notice given to the protected person must clearly indicate the manner in which the protected person may object to the proposed placement.

(e) The guardian may thereafter place the adult protected person in a mental health treatment facility, a nursing home or other residential facility without further court order. If an objection is made in the manner provided by ORS 125.075, the court shall schedule a hearing on the objection as soon as practicable.

(f) The requirement that notice be served on an attorney for a protected person under paragraph (c)(A) of this subsection does not impose any responsibility on the attorney receiving the notice to represent the protected person in the protective proceeding. [1995 c.664 §31; 2001 c.473 §1; 2005 c.498 §3]

125.325 Guardian’s report. Within 30 days after each anniversary of appointment, a guardian for an adult protected person shall file with the court a written report. The report must include a declaration under penalty of perjury in the form required by ORCP 1 E. Copies of the guardian’s report must be given to those persons specified in ORS 125.060 (3). The report shall be in substantially the following form:

IN THE _____ COURT _____ COUNTY,
STATE OF OREGON
DEPARTMENT OF PROBATE

In the Matter of the) No. _____
Guardianship of)
_____)
(Name of protected)
person))
A Protected)
Person.))

GUARDIAN’S REPORT

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

1. My name is _____.
2. My address and telephone number are:

Phone _____

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

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

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

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

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

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

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

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

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

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

13. I believe the guardianship should or should not continue because:

14. At the time of my last report, I held the following amount of money on behalf of the person: \$_____. Since my last report, I received the following amount of money on behalf of the person: \$_____. I spent the following amount of money on behalf of the person: \$_____. I now hold the following amount of money on behalf of the person: \$_____.

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

16. Since my last report:

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

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

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

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

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

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

Dated this ____ day of _____, 2____.

Guardian

[1995 c.664 §32; 1997 c.717 §6; 2007 c.284 §4]

125.330 Limitations on guardian appointed for person committed to custody of Department of Corrections. (1) Except as provided in subsection (2) of this section, a guardian appointed for a person committed to the legal and physical custody of the Department of Corrections may not exercise those powers specified in ORS 125.315 (1)(a) or (b) while the person remains confined.

(2) A guardian appointed for a person committed to the legal and physical custody of the Department of Corrections may take reasonable care of the person’s clothing, furniture and other personal effects that are not located at the person’s place of confinement.

(3) A guardian appointed for an incarcerated person may exercise those powers specified in ORS 125.315 (1)(c) only to the extent that the exercise of those powers is consistent with the protected person’s status as a confined person and with the powers and duties of the superintendent or other officials of the facility. In no event may a guardian appointed for a person committed to the legal and physical custody of the Department of Corrections exercise more authority over health care decisions than the protected person could exercise given the person’s status as a confined person. [1999 c.122 §2]

CONSERVATORS

(Appointment)

125.400 Order of appointment. Upon the filing of a petition seeking the appointment of a conservator, the court may appoint a conservator and make other appropriate protective orders if the court finds by clear and convincing evidence that the respondent is a minor or financially incapable, and that the respondent has money or property that requires management or protection. [1995 c.664 §33]

125.405 Letters of conservatorship. The court shall issue letters of conservatorship to the conservator after the filing of any acceptance of the appointment and bond that may be required. Letters of conservatorship must be in substantially the following form:

State of Oregon,)
) LETTERS OF
County of____) CONSERVATORSHIP

BY THESE LETTERS OF CONSERVATORSHIP be informed:

That on ___ (month) ___(day), 2___, the _____ Court, ___ County, State of Oregon, appointed _____ (name of conservator) conservator of the estate of _____ (name of protected person) and that the named conservator has qualified and has the authority and duties of conservator of the estate of the named protected person as provided by law.

LIMITATIONS: _____

IN TESTIMONY WHEREOF, I have subscribed my name and affixed the seal of the court at my office on ___ (month) ___(day), 2___.

(Seal)
_____, Clerk of the Court
By _____, Deputy

[1995 c.664 §34]

(Bond)

125.410 Conservator's bond. (1) Except as provided in subsection (2) of this section, the court shall require a conservator to furnish a bond conditioned upon faithful discharge of all duties of the conservator according to law, with sureties as specified by the court. Unless otherwise directed, the bond must be in the amount of the aggregate capital value of the property of the estate in the control of the conservator plus one year's estimated income minus the value of securities and money deposited under arrangements requiring an order of the court for their removal and the value of any real property that the conservator, by express limitation of power, lacks power to sell or convey without court authorization.

(2)(a) The court may waive a bond for good cause shown.

(b) Subsection (1) of this section does not affect the provisions of ORS 709.240, relating to a trust company acting as fiduciary, ORS 125.715, relating to a public guardian acting as fiduciary, or ORS 406.050 (8), relating to the Department of Veterans' Affairs acting as fiduciary.

(3) Sureties for a bond required under this section are jointly and severally liable with the conservator and with each other.

(4) Letters of conservatorship may not be issued until the bond required by this section is approved by the court.

(5) The bond of the conservator continues in effect until the sureties on the bond are released by order of the court.

(6) The court may at any time increase or reduce the amount of the bond required of a conservator for the protection of the protected person and the estate of the protected person.

(7) If a surety on a bond required by this section gives notice of intent to cancel the bond, the conservator shall execute and file in the protective proceeding a new bond before the cancellation date specified by the surety. The new bond shall be in the amount and subject to those conditions that may be required by the court. If the conservator fails to file a new bond, the authority of the conservator ends on the date specified by the surety for cancellation of the bond. The letters of conservatorship issued to the conservator are void from that date, and the conservator must make and file the final accounting of the conservator. [1995 c.664 §36; 2001 c.102 §5; 2005 c.625 §66; 2009 c.602 §4]

125.415 Termination of bond by surety. (1) A surety may cancel the obligation of the surety upon notice in writing to the conservator and the court. The notice shall specify an effective date for the cancellation that is not less than 30 days after the date of the notice.

(2) A surety's obligation under a bond shall continue until court approval of an accounting covering the period during which the bond was effective and an order is entered releasing the sureties. [1995 c.664 §37]

(Conservator's Powers and Duties)

125.420 Power of conservator over property of protected person. A conservator shall take possession of all the property of substantial value of the protected person, and of rents, income, issues and profits from those properties whether accruing before or after the appointment of the conservator. The conservator shall also take possession of all proceeds from the sale, mortgage, lease or other disposition of property of the protected person. The conservator may permit the protected person to retain possession and control of property and funds for living requirements as appropriate to the needs and capacities of the protected person. The title to all property of the protected person is in the protected person and not in the conservator. [1995 c.664 §38]

125.425 Powers of conservator to pay expenses of protected person and dependents. (1) A conservator may expend or distribute income or principal of the estate without prior court authorization or confirmation for the support, education, care or benefit of the protected person and the dependents of the protected person after the conservator considers recommendations relating to the appropriate standard of support, education, care and benefit for the protected person made by any parent or guardian of the protected person. The conservator is not personally responsible for sums paid to persons or organizations furnishing support, education, care or benefit to the protected person pursuant to the recommendations of a parent or guardian of the protected person unless:

(a) The conservator knows that the parent or guardian is deriving personal financial benefit from those payments; or

(b) The recommendations made by the parent or guardian clearly are not in the best interests of the protected person.

(2) A conservator may expend or distribute income or principal of the estate without prior court authorization or confirmation for the support, education, care or benefit of the protected person and the dependents of the protected person if those amounts are reasonably necessary for the support, education, care or benefit of the protected person with due regard to:

(a) The size of the estate, the probable duration of the conservatorship and the likelihood that the protected person, at some future time, may be fully able to manage the affairs of the protected person and the estate that has been conserved for the protected person;

(b) The accustomed standard of living of the protected person and members of the household of the protected person; and

(c) Other funds or sources used for the support of the protected person.

(3) A conservator may expend or distribute income or principal of the estate without prior court authorization or confirmation for the support, education, care or benefit of the dependents of the protected person, other persons who are members of the protected person's household who

are unable to support themselves and who are in need of support, and any other persons who were receiving support from the protected person before the appointment of the conservator.

(4) The conservator may reimburse any person, including the protected person, who has expended funds for the purposes specified in this section. The conservator may pay any person in advance for those purposes if the conservator reasonably believes that the services will be performed and where advance payments are customary or reasonably necessary under the circumstances. [1995 c.664 §39]

125.430 Sale of protected person's residence. (1) A protected person's principal residence may be sold by a conservator only with the prior approval of the court. A motion seeking prior approval must be filed with the court and notice given to the persons specified in ORS 125.060 (3).

(2) For purposes of this section, "principal residence" means a residence that is owned by the protected person and in which the protected person resides or last resided, whether or not the protected person resides in the residence at the time approval to sell is sought from the court. [1995 c.664 §40]

125.435 Power of conservator to make gifts. If the estate has adequate funds to provide for the purposes specified in ORS 125.425, a conservator may make gifts on behalf of the protected person for such purposes as the protected person might have been expected to make. The conservator may make gifts without prior court approval of up to \$250 to a person in a calendar year, not to exceed an aggregate amount of \$1,000 for all gifts in a calendar year. The conservator must have prior court approval for any other gifts. [1995 c.664 §41]

125.440 Acts conservator may perform only with court approval. A conservator may perform the following acts only with prior court approval:

(1) Convey or release contingent or expectant interests of the protected person in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety.

(2) Create revocable or irrevocable trusts of property of the estate. A trust created by the conservator may extend beyond the period of disability of the protected person or beyond the life of the protected person. A trust created by the conservator must be consistent with the will of the protected person or any other written or oral expression of testamentary intent made by the protected person before the person became incapacitated. The court may not approve a trust that has the effect of terminating the conservatorship unless:

(a) The trust is created for the purpose of qualifying the protected person for needs-based government benefits or maintaining the eligibility of the protected person for needs-based government benefits;

(b) The value of the conservatorship estate, including the amount to be transferred to the trust, does not exceed \$50,000;

(c) The purpose of establishing the conservatorship was to create the trust; or

(d) The conservator shows other good cause to the court.

(3) Exercise rights of the protected person to elect options and change beneficiaries under insurance and annuity policies and to surrender the policies for their cash value.

(4) Disclaim any interest the protected person may have by testate or intestate succession, by inter vivos transfer or by transfer on death deed.

- (5) Authorize, direct or ratify any annuity contract or contract for life care.
- (6) Revoke a transfer on death deed. [1995 c.664 §42; 2007 c.62 §1; 2011 c.212 §28]

Note: Section 31, chapter 212, Oregon Laws 2011, provides:

Sec. 31. Sections 19 to 21 of this 2011 Act [93.981 to 93.985] and the amendments to ORS 86.740, 93.030, 93.040, 107.115, 112.465, 112.570 and 125.440 by sections 22 to 28 of this 2011 Act apply to a transfer on death deed made before, on or after the effective date of this 2011 Act [January 1, 2012] by a transferor dying on or after the effective date of this 2011 Act. [2011 c.212 §31]

125.445 Acts authorized to be performed without prior court approval. A conservator may perform the following acts without prior court authorization or confirmation if the conservator is acting reasonably to accomplish the purposes for which the conservator was appointed:

- (1) Collect, hold and retain assets of the estate including land wherever situated, until, in the judgment of the conservator, disposition of the assets should be made. Assets of the estate may be retained even though those assets include property in which the conservator is personally interested.
- (2) Receive additions to the estate.
- (3) Continue or participate in the operation of any business or other enterprise.
- (4) Acquire an undivided interest in an estate asset in which the conservator, in any fiduciary capacity, holds an undivided interest.
- (5) Invest and reinvest estate assets and funds in the same manner as a trustee may invest and reinvest.
- (6) Deposit estate funds in a bank including a bank operated by the conservator.
- (7) Except as limited in ORS 125.430, acquire or dispose of an estate asset including real property wherever situated for cash or on credit, at public or private sale.
- (8) Manage, develop, improve, exchange, partition, change the character of or abandon an estate asset in connection with the exercise of any power vested in the conservator.
- (9) Make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, or raze existing or erect new party walls or buildings.
- (10) Subdivide, develop or dedicate land to public use, make or obtain the vacation of plats and adjust boundaries, adjust differences in valuation on exchange or partition by giving or receiving considerations, and dedicate easements to public use without consideration.
- (11) Enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the conservatorship.
- (12) Enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement.
- (13) Grant an option involving disposition of an estate asset or take an option for acquisition of any asset.
- (14) Vote a security, in person or by general or limited proxy.
- (15) Pay calls, assessments and any other sums chargeable or accruing against or on account of securities.
- (16) Sell or exercise stock subscription or conversion rights, or consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution or liquidation of a corporation or other business enterprise.

(17) Hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by delivery. The conservator is liable for any act of the nominee in connection with the stock so held.

(18) Insure the assets of the estate against damage or loss, and the conservator against liability with respect to third persons.

(19) Borrow money to be repaid from estate assets or otherwise and mortgage or pledge property of the protected person as security therefor.

(20) Advance money for the protection of the estate or the protected person, and for all expenses, losses and liability sustained in the administration of the estate or because of the holding or ownership of any estate assets. The conservator has a lien on the estate as against the protected person for advances so made.

(21) Pay or contest any claim, settle a claim by or against the estate or the protected person by compromise, arbitration or otherwise, and release, in whole or in part, any claim belonging to the estate to the extent that the claim is uncollectible.

(22) Pay taxes, assessments, compensation of the conservator and other expenses incurred in the collection, care, administration and protection of the estate.

(23) Allocate items of income or expense to either income or principal, including creation of reserves out of income for depreciation, obsolescence or amortization, or for depletion in mineral or timber properties.

(24) Pay any sum distributable to a protected person or a dependent of a protected person by paying the sum to the protected person or the dependent, or by paying the sum either to a guardian, custodian under ORS 126.700, or conservator of the protected person or, if none, to a relative or other person with custody of the protected person.

(25) Employ persons, including attorneys, auditors, investment advisers or agents, even though they are associated with the conservator, to advise or assist the conservator in the performance of administrative duties, acting upon their recommendation without independent investigation, and instead of acting personally, employing one or more agents to perform any act of administration, whether or not discretionary, except that payment to the conservator's attorney of record is subject to the provisions of ORS 125.095.

(26) Prosecute or defend actions, claims or proceedings in any jurisdiction for the protection of estate assets and of the conservator in the performance of duties.

(27) Prosecute claims of the protected person including those for the personal injury of the protected person.

(28) Execute and deliver all instruments that will accomplish or facilitate the exercise of the powers vested in the conservator. [1995 c.664 §43]

125.450 Voidable transactions. Any sale or encumbrance to a conservator, the spouse, agent or attorney of the conservator, or any corporation or trust in which the conservator has a substantial beneficial interest, or any transaction that is otherwise affected by a substantial conflict of interest is voidable unless the transaction is approved by the court after the filing of a motion with the court seeking approval of the transaction. [1995 c.664 §44]

(Desires of Protected Person)

125.455 Power of competent protected person over estate. (1) A protected person, if mentally competent, may make wills, change beneficiaries of life insurance and annuity policies

and exercise any power of appointment or any elective right to share in the estate of a deceased spouse.

(2) Except as provided in this section and ORS 125.420, a protected person for whom a conservator has been appointed cannot convey or encumber the estate of the protected person or make any contract or election affecting the estate of the protected person. [1995 c.664 §45]

125.460 Consideration of estate plan of protected person. In investing the estate, selecting assets of the estate for distribution and utilizing powers of revocation or withdrawal available for the support of the protected person and exercisable by the conservator or the court, the conservator and the court shall take into account any known estate plan of the protected person, including the will of the protected person, any revocable trust of which the protected person is settlor, and any contract, transfer or joint ownership arrangement with provisions for payment or transfer of benefits or interests at the death of the protected person to another or others that the protected person may have originated. The conservator may examine the will of the protected person. [1995 c.664 §46]

(Inventory of Property)

125.465 Discovery of property; examination by conservator. (1) The court may order any person to appear and give testimony by deposition if it appears probable that the person:

- (a) Has concealed, secreted or disposed of any property of the protected person;
- (b) Has been entrusted with property of the protected person and fails to account for that property to the conservator;
- (c) Has concealed, secreted or disposed of any writing, instrument or document relating to the affairs of the protected person;
- (d) Has knowledge or information that is necessary to the administration of the affairs of the protected person; or
- (e) As an officer or agent of a corporation, has refused to allow examination of the books and records of the corporation that the protected person has a right to examine.

(2) If a person is cited to appear under this section and fails to appear or to answer questions asked as authorized by the order of the court, the person may be held in contempt of court. [1995 c.664 §47]

125.470 Filing of inventory required; supplemental inventory. (1) Within 90 days after the date of appointment, unless a longer time is granted by the court, a conservator must file in the protective proceeding an inventory of all the property of the estate of the protected person that has come into the possession or knowledge of the conservator. The inventory must show the estimates by the conservator of the respective true cash values as of the date of the protective order. If the protected person has attained 14 years of age, a copy of the inventory must be served on the protected person personally or by mail.

(2) Whenever any property of the estate of the protected person not included in the inventory or any subsequent accounting and not derived from any asset included in a prior inventory or any subsequent accounting comes into the possession or knowledge of the conservator, the conservator must file a supplemental inventory in the protective proceeding. The supplemental inventory must be filed within 30 days after the date of receiving possession or knowledge of the property.

(3) If the estate of the protected person includes real property, the conservator must record in the deed records of the clerk of the county in which the real property is situated a certified copy of the inventory required by this section or an abstract in substantially the following form:

The protected person's name is _____

Conservatorship Case # _____

County where proceedings are pending _____

Conservator is _____

Conservator's address is _____

Attorney's name is _____

Attorney's address is _____

The following real property is subject to proceedings: _____

Signature _____

Dated _____

STATE OF OREGON)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2____, by _____.

Notary Public for Oregon

My commission expires: _____

[1995 c.664 §48]

(Accountings)

125.475 Conservator's accounting to court; contents. (1) Unless the court by order provides otherwise, a conservator shall account to the court for the administration of the protected estate within 60 days after each anniversary of appointment. In addition, a conservator shall account to the court for the administration of the protected estate:

(a) Within 60 days after the death of the protected person, a minor protected person attains majority or an adult protected person becomes able to manage the protected person's financial resources; and

(b) Within 30 days after the removal of the conservator, the resignation of the conservator or the termination of the conservator's authority under ORS 125.410 (7).

(2) Each accounting must include the following information:

(a) The period of time covered by the accounting.

(b) The total value of the property with which the conservator is chargeable according to the inventory, or, if there was a prior accounting, the amount of the balance of the prior accounting.

(c) All money and property received during the period covered by the accounting.

(d) All disbursements made during the period covered by the accounting.

(e) The amount of bond posted by the conservator during the period covered by the accounting.

(f) Such other information as the conservator considers necessary, or that the court might require, for the purpose of disclosing the condition of the estate.

(3) Vouchers for disbursements must accompany the accounting unless otherwise provided by order or rule of the court or unless the conservator is a trust company that has complied with ORS 709.030. If vouchers are not required, the conservator shall:

(a) Maintain the vouchers for a period of not less than one year following the date on which the order approving the final accounting is entered;

(b) Permit interested persons to inspect the vouchers and receive copies of the vouchers at their own expense at the place of business of the conservator during the conservator's normal business hours at any time before the end of one year following the date on which the order approving the final accounting is entered; and

(c) Include in each annual accounting and the final accounting a statement that the vouchers are not filed with the accounting but are maintained by the conservator and may be inspected and copied as provided in this subsection.

(4) The court may waive a final accounting if:

(a) The conservator was appointed because the protected person was a minor, and the protected person has attained the age of majority, or the conservator was appointed because the protected person was financially incapable, and the protected person is no longer financially incapable;

(b) The protected person gives a receipt to the conservator for the property delivered to the protected person; and

(c) The conservator files with the court a copy of the receipt issued by the protected person to the conservator.

(5) Copies of accountings must be served on all persons listed in ORS 125.060 (3). The court may waive service on the protected person if service of the copy would not assist the protected person in understanding the proceedings.

(6) The court may require a conservator to submit to a physical check of the estate in the control of the conservator at any time and in any manner the court may specify.

(7) The Chief Justice of the Supreme Court may by rule specify the form and contents of accounts that must be filed by a conservator. [1995 c.664 §49; 1997 c.631 §411; 1999 c.592 §4; 2005 c.123 §2]

125.480 Approval of accounting. Subject to appeal or vacation within the time allowed by law, an order, made upon notice and hearing, allowing an intermediate accounting of a conservator, is final as to the liabilities of the conservator concerning the matters considered in connection with the intermediate accounting. An order, made upon notice and hearing, allowing a final accounting is final as to all previously unsettled liabilities of the conservator to the protected person or successors relating to the conservatorship. [1995 c.664 §50]

(Liabilities)

125.485 Liability of conservator. (1) A conservator is not personally liable on a contract entered into in the fiduciary capacity of the conservator in the course of administering the estate unless:

- (a) The contract specifically makes the conservator liable in a personal capacity; or
- (b) The conservator fails to reveal the representative capacity of the conservator and identity of the estate in the contract.

(2) The conservator is personally liable for obligations arising from ownership, obligations arising out of control of property of the estate and torts committed in the course of administration of the estate only if the conservator is personally at fault.

(3) Claims based on contracts entered into by a conservator in the fiduciary capacity of the conservator, on obligations arising from ownership or control of the estate or on torts committed in the course of administration of the estate may be asserted against the estate by proceeding against the conservator in the fiduciary capacity of the conservator, whether or not the conservator is personally liable.

(4) Any question of liability between the estate and the conservator personally may be determined in a proceeding for accounting or for indemnification, or in any other appropriate proceeding or action. [1995 c.664 §51]

125.490 Status of persons dealing with conservator. (1) A person who in good faith either assists a conservator or deals with the conservator for value in any transaction other than those requiring a court order under the provisions of this chapter is protected as if the conservator properly exercised the power. The fact that a person knowingly deals with a conservator does not require the person to inquire into existence of a power or the propriety of its exercise, except that restrictions on powers of conservators that are indorsed on letters are effective as to third persons. A person is not required to see to the proper application of estate assets paid or delivered to a conservator.

(2) The protection provided under subsection (1) of this section:

- (a) Is not affected by any procedural irregularity or jurisdictional defect in the proceedings that resulted in the issuance of letters; and
- (b) Is in addition to the protection provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries.

(3) A person who holds property in which the protected person has an interest, or who is indebted either to the protected person or to the protected person and others, may enter into transactions with the conservator with respect to the property or debt to the same extent that the person could deal with the protected person if the protected person were not under protection. [1995 c.664 §52]

(Claims and Expenses)

125.495 Payment of claims against estate or protected person. (1) A conservator shall pay from the estate claims against the estate and against the protected person arising before or after the conservatorship upon their presentation, allowance and maturity. Claims that become absolute at an uncertain event may not be allowed. The conservator may allow claims against the estate of a protected person in part and disallow them in part.

(2) A claim may be presented by either of the following methods:

(a) The claimant may deliver or mail to the conservator or the attorney for the conservator a written statement of the claim stating the basis of the claim, the name and address of the claimant and of the claimant's attorney if the claimant is represented by an attorney in respect to the claim, and the amount claimed.

(b) The claimant may file the claim with the clerk of the court in which the proceeding is pending, captioned in a manner that will identify the protected person and the clerk's number of the proceeding, and deliver or mail a copy of the statement to the conservator or the attorney of the conservator.

(3) If the conservator disallows the claim in whole or in part, or if the conservator finds that the claim is valid but not due, the conservator shall notify the claimant or the attorney of the claimant in writing of the disallowance or finding of the conservator.

(4) The presentation of a claim and any defect in form or substance may be waived by the conservator or by the court if the claim, properly stated, is a valid and absolute obligation of the estate.

(5) The conservator may reconsider any claim previously rejected or allowed, or may compromise any claim against the estate of a protected person, including contingent, unliquidated and unmatured claims. [1995 c.664 §53]

125.500 Enforcement of claim against estate or protected person. (1) An action upon a claim may not be brought until the claim is disallowed or until 60 days have elapsed from the date of its presentment without allowance of payment.

(2) A creditor of the protected person or the estate of the protected person whose claim is secured may not exercise remedies against the security until at least 30 days after the claim is presented and after notice to the conservator or the attorney of the conservator that the creditor intends to exercise remedies against the security. The court may shorten the period for cause.

(3) The conservator may convey the security to the secured creditor in full or partial satisfaction of the claim if the secured creditor agrees to accept the conveyance as full satisfaction or partial satisfaction of the debt. [1995 c.664 §54]

125.505 Notice of claim to conservator. If a proceeding is pending against a protected person at the time of appointment of a conservator or is commenced against the protected person after appointment of a conservator, the plaintiff must give notice of the proceeding to the conservator or the attorney of the conservator if any judgment or order arising out of the proceeding will constitute a claim against the estate. [1995 c.664 §55]

125.510 Procedure where claim disallowed. (1) If the conservator disallows a claim in whole or in part, or if the conservator does not allow or disallow a claim within 60 days after it is presented, the claimant may:

(a) File in the conservatorship proceeding a request for a summary determination of the claim by the court, with proof of service of a copy upon the conservator or the attorney of the conservator; or

(b) Commence a separate action against the conservator on the claim in a court of competent jurisdiction. The action shall proceed and be tried as any other action.

(2) If the claimant requests a summary hearing, the conservator may, within 30 days after service of the request, notify the claimant in writing that if the claimant desires to prove the claim the claimant must commence a separate action against the conservator within 60 days after

service of the notice. If the claimant fails to commence an action against the conservator within that time, the claim is barred.

(3) An order allowing or disallowing in whole or in part a claim that has been considered upon a summary hearing may not be appealed. [1995 c.664 §56]

125.515 Effect of presentation of claim on statute of limitations. (1) The following periods of time shall not be part of the time limited for the commencement of an action under any statute of limitation:

(a) The period of time beginning at the presentation of a claim and ending 30 days after the claim is disallowed.

(b) If the claim is not allowed or disallowed within 60 days after it is presented, the period of time beginning with the presentation of the claim and ending 90 days after the claim is presented.

(2) For the purpose of any statute of limitation, an action is considered commenced upon the filing of a request for a summary determination of a claim that has been disallowed in whole or in part. [1995 c.664 §57]

125.520 Order of payment of expenses and claims. If it is likely that the estate of the protected person will be exhausted before all claims against the estate are paid, the conservator shall give preference in the payment of claims in the following order of priority:

(1) Funds needed for the current care, maintenance and support of the protected person and the dependents of the protected person and claims for the expenses of administration.

(2) Expenses and claims for the care, maintenance and support of the protected person and the dependents of the protected person that are not paid under subsection (1) of this section.

(3) Debts and taxes with preference under federal law.

(4) Taxes with preference under the laws of this state that are due and payable while possession of the estate of the protected person is retained by the conservator.

(5) All other claims against the conservatorship estate. [1995 c.664 §58; 1997 c.717 §7]

(Termination of Proceedings)

125.525 Termination of conservatorship. An order terminating a conservatorship shall direct the conservator to deliver the assets in the possession of the conservator to the protected person:

(1) Immediately, to the extent that the assets are not required for payment of expenses of administration and debts incurred by the conservator for the account of the estate of the protected person; and

(2) Upon entry of an order approving the final accounting or surcharging the conservator, to the extent of any balance remaining. [1995 c.664 §59]

125.530 Powers and duties of conservator on death of protected person. If a protected person dies and the conservator has possession of a will of the protected person, the conservator shall either deliver the will to the personal representative named in the will or deliver the will to the court for safekeeping. If the conservator delivers the will to the court for safekeeping, the conservator must inform any personal representative named in the will that the conservator has made that delivery. If it is not possible to inform the named personal representative, the conservator shall inform the beneficiaries named in the will of the delivery. The conservator

shall retain and administer the estate for delivery to the personal representative of the decedent or other persons entitled to the estate. [1995 c.664 §60; 1997 c.717 §8]

125.535 Disposition of small estate. If at any time the estate of a protected person consists of personal property having a value not exceeding by more than \$10,000 the aggregate amount of unpaid expenses of administration of the protected estate and claims against the estate, the conservator, with prior accounting and approval of the court by order, may pay the expenses and claims from the estate and deliver all the remaining personal property to the person designated by the court in the order, to be held, invested or used as ordered by the court. The recipient of the property shall give a receipt to the conservator. The receipt is a release of and acquittance to the conservator as to the property delivered. The conservator shall file in the protective proceeding proper receipts or other evidence satisfactory to the court showing the delivery. Upon the court receiving the evidence, the court shall enter an order terminating the protective proceeding. [1995 c.664 §61]

(Payment to Foreign Conservator)

125.540 Payment of debt and delivery of property to foreign conservator. (1) A person indebted to a protected person, or having possession of property or of an instrument evidencing a debt, stock or chose in action belonging to a protected person, may make payment or delivery to a conservator, guardian or other fiduciary appointed by a court of the state where the protected person resides, upon being presented with proof of appointment and an affidavit made by the fiduciary stating that:

- (a) A protective proceeding relating to the protected person is not pending in this state; and
- (b) The fiduciary is entitled to payment or to receive delivery.

(2) If the person to whom the affidavit is presented is not aware of any protective proceeding pending in this state, payment or delivery in response to the demand and affidavit discharges the debtor or possessor. [1995 c.664 §62]

TEMPORARY FIDUCIARIES

125.600 In general. (1) A temporary fiduciary who will exercise the powers of a guardian may be appointed by the court if the court makes a specific finding by clear and convincing evidence that the respondent is incapacitated or a minor, that there is an immediate and serious danger to the life or health of the respondent, and that the welfare of the respondent requires immediate action.

(2) A temporary fiduciary who will exercise the powers of a conservator may be appointed by the court if the court makes a specific finding by clear and convincing evidence that the respondent is financially incapable or a minor, that there is an immediate and serious danger to the estate of the respondent, and that the welfare of the respondent requires immediate action.

(3) A temporary fiduciary may be appointed only for a specific purpose and only for a specific period of time. The period of time may not exceed 30 days. The court may extend the period of the temporary fiduciary's authority for an additional period not to exceed 30 days upon motion and good cause shown. The court may terminate the authority of a temporary fiduciary at any time.

(4) Except as otherwise provided in this section and ORS 125.605 and 125.610, a temporary fiduciary is subject to all provisions of this chapter. [1995 c.664 §63]

125.605 Procedure for appointment of temporary fiduciary. (1) In addition to the requirements of ORS 125.055, a petition for the appointment of a temporary fiduciary must contain allegations of the conditions required under ORS 125.600.

(2) Notice of a petition for the appointment of a temporary fiduciary must be given to the persons specified in ORS 125.060 (2) in the manner provided by ORS 125.065 at least two days before the appointment of a temporary fiduciary. The court may waive the requirement that notice be given before appointment if the court finds that the immediate and serious danger requires an immediate appointment. In no event may the notice required by ORS 125.060 be given more than two days after the appointment is made.

(3) Notice of a motion for the extension of a temporary fiduciary's authority beyond 30 days under ORS 125.600 (3) must be given to the persons specified in ORS 125.060 (2) in the manner provided by ORS 125.065 at least two days before the entry of an order granting the extension.

(4) The court shall appoint a visitor if the petition seeks appointment of a temporary guardian. A visitor may be appointed by the court if a petition seeks appointment of a temporary conservator. Within three days after the appointment of the temporary fiduciary, the visitor shall conduct an interview of the respondent. The visitor shall report to the court within five days after the appointment of a temporary fiduciary is made. The report of the visitor shall be limited to the conditions alleged to support the appointment of a temporary fiduciary.

(5) If objections are made to the appointment of a temporary fiduciary or to the extension of a temporary fiduciary's authority under ORS 125.600 (3), the court shall hear the objections within two judicial days after the date on which the objections are filed. Notwithstanding ORS 21.170, no fee shall be charged to any person filing an objection to the appointment of a temporary fiduciary or to the extension of a temporary fiduciary's authority under ORS 125.600 (3). [1995 c.664 §64; 1997 c.717 §9; 2011 c.595 §130]

125.610 Report of temporary fiduciary. (1) A temporary fiduciary shall file a report with the court setting out all activities of the temporary fiduciary under the authority of the appointment. Except as provided in subsection (2) of this section, the report must be filed:

- (a) When the temporary fiduciary completes the duties of the fiduciary;
- (b) When the temporary appointment expires; or
- (c) When the court orders the termination of the temporary fiduciary's authority.

(2) If the person appointed as temporary fiduciary is appointed to act as a permanent fiduciary for the protected person, the report of the activities of the temporary fiduciary may be included in the first annual report of the guardian or in the first accounting of the conservator. [1995 c.664 §65]

OTHER PROTECTIVE ORDERS

125.650 Other protective orders. (1) The court may enter protective orders without the appointment of a fiduciary or in addition to appointment of a fiduciary. A petition for a protective order that does not seek the appointment of a fiduciary is subject to all requirements prescribed for petitions for appointment of a fiduciary. A court may enter a protective order other

than appointment of a fiduciary only upon a determination that grounds exist for the appointment of a fiduciary.

(2) In issuing protective orders under this section, the court may exercise any power that could be exercised by a guardian or conservator in a protective proceeding, or any power that could be exercised by the court in a protective proceeding in which a fiduciary is appointed.

(3) Before entering a protective order under this section, the court shall consider the interests of creditors and dependents of the protected person and whether the protected person needs the continuing protection of a fiduciary.

(4) The court may appoint a fiduciary whose authority is limited to a specified time and whose power is limited to certain acts needed to implement the protective order. A fiduciary appointed under this subsection need only make such report to the court as the court may require.

(5) In addition to any other protective order that may be entered under this section, the court may authorize, direct or ratify:

(a) Any transaction necessary or desirable to achieve any security, service or care arrangement meeting the foreseeable needs of the protected person, including but not limited to payment, delivery, deposit or retention of funds or property, sale, mortgage, lease or other transfer of property, entry into an annuity contract, a contract for life care, a deposit contract, a contract for training and education, or addition to or establishment of a suitable trust.

(b) Any contract, trust or other transaction relating to the protected person's financial affairs or involving the estate of the person if the court determines that the transaction is in the best interests of the protected person. [1995 c.664 §66]

PUBLIC GUARDIANS AND CONSERVATORS

125.700 Office of public guardian and conservator; expenses; termination. The county court or board of county commissioners of any county:

(1) After making a determination that there exists a need within the county for a guardian or conservator for persons who do not have relatives or friends willing to serve as a guardian or conservator and capable of assuming the duties of guardianship or conservatorship, may create within the county the office of public guardian and conservator and such subordinate positions as may be necessary to operate effectively the office of public guardian and conservator within the county.

(2) May expend county funds for the purpose of operating the office of public guardian and conservator.

(3) After establishment of the office of public guardian and conservator within a county, upon the finding that the county does not need the service of a public guardian and conservator, may terminate the office. [Formerly 126.905]

Note: 125.700 to 125.730 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 125 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Note: Sections 1 and 2, chapter 525, Oregon Laws 2011, provide:

Sec. 1. Public Guardian and Conservator Task Force. (1) It is the intent of the Legislative Assembly to recreate the Public Guardian and Conservator Task Force, first established on June 17, 2009, by section 1, chapter 321, Oregon Laws 2009, and repealed on January 10, 2011, so

that the task force may complete its work as set forth in section 1, chapter 321, Oregon Laws 2009.

(2) The Public Guardian and Conservator Task Force shall consist of not fewer than 11 members appointed as follows:

(a) The President of the Senate shall appoint one member from among members of the Senate, who shall cease being a member of the task force upon ceasing to be a member of the Legislative Assembly.

(b) The Speaker of the House of Representatives shall appoint one member from among members of the House of Representatives, who shall cease being a member of the task force upon ceasing to be a member of the Legislative Assembly.

(c) The Chief Justice of the Supreme Court shall appoint one member.

(d) The Board of Governors of the Oregon State Bar shall appoint one member.

(e) The Governor shall appoint seven members as follows:

(A) Two from the Department of Human Services, one of whom has expertise in adult protective services;

(B) One from Disability Rights Oregon or a similar advocacy organization;

(C) One from the Governor's Commission on Senior Services;

(D) One from the Oregon Disabilities Commission;

(E) One designated by the Long Term Care Ombudsman; and

(F) One from an established type A or type B Area Agency on Aging within a planning and service area designated under section 305 of the federal Older Americans Act.

(f) The Governor shall appoint such other members as the task force deems necessary.

(3) The task force shall have its first meeting on or before the later of 90 days after adjournment sine die of the 2011 session of the Seventy-sixth Legislative Assembly or September 30, 2011.

(4) A member may not serve or be employed as a provider of public guardian or conservator services during the member's term of appointment.

(5) The task force shall study and make recommendations on:

(a) The need for public guardian and conservator services in this state. In developing its recommendations, the task force shall consider providing services only to those who cannot afford them or to those whom the private sector does not serve.

(b) Options and models of public guardian and conservator programs. In developing its recommendations, the task force shall consider the most cost-effective approaches to delivering quality public guardian and conservator services in this state.

(c) The need for, efficacy of, duration of, resources required to establish and evaluation procedures for interim pilot programs.

(d) Oregon's public guardian and conservator laws in ORS 125.700 to 125.730 and the need for legislative changes.

(e) The establishment of a permanent commission with authority to allocate funds to projects, make legislative recommendations on improvements and perform such other functions as may be appropriate.

(f) The development of model standards of practice for a public guardian and conservator program, including standards of eligibility, standards for program operations and standards of professional conduct.

(g) Alternative funding sources, public or private, to aid in financing public guardian and conservator programs and projects.

(6) The task force shall prepare a detailed assessment of the costs to implement the task force's recommendations. The assessment must address both current and future needs in providing recommended public guardian and conservator services. Each agency or organization with a member on the task force shall cooperate with the task force in assessing and identifying the costs of complying with the task force's recommendations.

(7) A majority of the members of the task force constitutes a quorum for the transaction of business.

(8) Official action by the task force requires the approval of a majority of the members of the task force.

(9) The task force shall elect one of its members to serve as chairperson.

(10) If there is a vacancy for any cause, the appointing authority shall make an appointment to become immediately effective.

(11) The task force shall meet at times and places specified by the call of the chairperson or of a majority of the members of the task force.

(12) The task force may adopt rules necessary for the operation of the task force.

(13) The task force shall make a report, and may include recommendations for legislation, to an interim committee of the Legislative Assembly related to public guardians and conservators no later than October 1, 2012.

(14) The task force may accept donations of staff support, office space and equipment from Disability Rights Oregon or similar advocacy organizations to assist the task force in the performance of its functions.

(15) Notwithstanding ORS 171.072, members of the task force who are members of the Legislative Assembly are not entitled to mileage expenses or a per diem and serve as volunteers on the task force. Other members of the task force are not entitled to compensation or reimbursement for expenses and serve as volunteers on the task force.

(16) All agencies of state government as defined in ORS 174.111 are directed to assist the task force in the performance of its duties and, to the extent permitted by laws relating to confidentiality, to furnish such information and advice as the members of the task force consider necessary to perform their duties. [2011 c.525 §1]

Sec. 2. Section 1 of this 2011 Act is repealed on July 1, 2013. [2011 c.525 §2]

125.705 Effect of vacancy in office of public guardian and conservator. The person appointed to the office of public guardian and conservator shall serve in the office at the pleasure of the appointing authority. If the person holding the office of public guardian and conservator in a county is removed from office, dies, becomes incapacitated or resigns, the removal, death, incapacity or resignation shall operate to remove such public guardian and conservator as guardian and conservator of all estates then under the guardianship and conservatorship of the person. [Formerly 126.915]

Note: See first note under 125.700.

125.710 Powers and duties of public guardian and conservator. (1) The public guardian and conservator may serve as the guardian or conservator, or both, of any person of whom the court having probate jurisdiction in the county may have jurisdiction. The public guardian and conservator may serve as guardian or conservator upon the petition of any person or upon the own petition of the public guardian and conservator.

(2) When appointed as guardian or conservator by the court having probate jurisdiction, the public guardian and conservator shall serve as provided in ORS chapter 125, ORS 127.005 and 127.015 except as specifically stated to the contrary in ORS 125.700 to 125.730.

(3) The public guardian and conservator in the discretion of the public guardian and conservator may employ private attorneys if the fees for the attorneys can be defrayed out of funds of the guardianship or conservatorship estate. [Formerly 126.925]

Note: See first note under 125.700.

125.715 Bond; exoneration of surety. (1) Before entering into office as public guardian and conservator, the person appointed to the office shall file an official bond in such amount as may be fixed from time to time by the board of county commissioners or the court having probate jurisdiction, which bond shall inure to the joint benefit of the several guardianship or conservatorship estates in which the person is acting as guardian or conservator and the county. The public guardian and conservator shall not be required to file bonds in individual estates.

(2) Upon removal of the public guardian and conservator in accordance with the provisions of ORS 125.705, the surety on the public guardian and conservator bond shall be exonerated upon order to that effect of the court having probate jurisdiction in the county. [Formerly 126.935]

Note: See first note under 125.700.

125.720 Deposit of funds. All funds coming into the custody of the public guardian and conservator shall be deposited in the county treasury and disbursed by proper warrant, or shall be deposited in one or more banks or invested in one or more insured savings and loan associations authorized to do business within the county, or as provided by ORS 125.445 (5). [Formerly 126.945]

Note: See first note under 125.700.

125.725 Reimbursement of public guardian and conservator's expenses from estate of ward or protected person. The public guardian and conservator shall have a claim against the ward's or protected person's estate for reasonable expenses incurred in the execution of the guardianship or conservatorship and such compensation for services and those of the attorney of the public guardian and conservator as the court having probate jurisdiction in the county deems just and reasonable. If the public guardian and conservator is compensated by the county for services, any reimbursement of expenses or compensation shall be paid to the county. [Formerly 126.955]

Note: See first note under 125.700.

125.730 Fees prohibited. No fee shall be charged or received by any court having probate jurisdiction for the filing of any petition asking for the appointment of the public guardian and conservator or for any official service performed by that court in the course of the guardianship or conservatorship proceedings. [Formerly 126.965]

Note: See first note under 125.700.

UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT

(Article 1 - General Provisions)

125.800 Short title. ORS 125.800 to 125.852 may be cited as the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act. [2009 c.179 §1]

Note: 125.800 to 125.852 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 125 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

125.802 Definitions. As used in ORS 125.800 to 125.852:

- (1) “Adult” means an individual who has attained 18 years of age.
- (2) “Conservator” means a person appointed by the court to administer the property of an adult, including a person appointed under ORS chapter 125.
- (3) “Conservatorship order” means an order appointing a conservator or other order related to management of an adult’s property.
- (4) “Conservatorship proceeding” means a judicial proceeding in which a conservatorship order is sought or has been issued.
- (5) “Guardian” means a person appointed by the court to make decisions regarding the person of an adult, including a person appointed under ORS chapter 125.
- (6) “Guardianship order” means an order appointing a guardian.
- (7) “Guardianship proceeding” means a judicial proceeding in which an order for the appointment of a guardian is sought or has been issued.
- (8) “Incapacitated person” means an adult for whom a guardian has been appointed.
- (9) “Party” means the respondent, petitioner, guardian, conservator or any other person allowed by the court to participate in a guardianship or conservatorship proceeding.
- (10)(a) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency or instrumentality or any other legal or commercial entity.
- (b) “Person” as defined in paragraph (a) of this subsection does not apply in the terms “incapacitated person” or “protected person.”
- (11) “Protected person” means an adult for whom a conservatorship order has been issued.
- (12) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- (13) “Respondent” means an adult for whom a conservatorship order or the appointment of a guardian is sought.
- (14) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe or any territory or insular possession subject to the jurisdiction of the United States. [2009 c.179 §2]

Note: See note under 125.800.

125.805 International application. A court of this state may treat a foreign country as if it were a state for the purpose of applying ORS 125.800 to 125.840, 125.850 and 125.852. [2009 c.179 §3]

Note: See note under 125.800.

125.807 Communication between courts. (1) A court of this state may communicate with a court in another state concerning a proceeding arising under ORS 125.800 to 125.852. The court may allow the parties to participate in the communication. Except as provided in subsection (2) of this section, the court shall make a record of the communication. The record may be limited to the fact that the communication occurred.

(2) Courts may communicate concerning schedules, calendars, court records and other administrative matters without making a record. [2009 c.179 §4]

Note: See note under 125.800.

125.810 Cooperation between courts. (1) In a guardianship or conservatorship proceeding in this state, a court of this state may request the appropriate court of another state to do any of the following:

- (a) Hold an evidentiary hearing;
- (b) Order a person in that state to produce evidence or give testimony pursuant to procedures of that state;
- (c) Order that an evaluation or assessment be made of the respondent;
- (d) Order any appropriate investigation of a person involved in a proceeding;
- (e) Forward to the court of this state a certified copy of the transcript or other record of a hearing under paragraph (a) of this subsection or any other proceeding, any evidence otherwise produced under paragraph (b) of this subsection and any evaluation or assessment prepared in compliance with an order under paragraph (c) or (d) of this subsection;
- (f) Issue any order necessary to assure the appearance in the proceeding of a person whose presence is necessary for the court to make a determination, including the respondent or the incapacitated or protected person; or
- (g) Issue an order authorizing the release of medical, financial, criminal or other relevant information in that state, including protected health information as defined in 45 C.F.R. 164.504.

(2) If a court of another state in which a guardianship or conservatorship proceeding is pending requests assistance of the kind provided in subsection (1) of this section, a court of this state has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request. [2009 c.179 §5]

Note: See note under 125.800.

125.812 Taking testimony in another state. (1) In a guardianship or conservatorship proceeding, in addition to other procedures that may be available, testimony of a witness who is located in another state may be offered by deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order that the testimony of a witness be taken in another state and may prescribe the manner in which and the terms upon which the testimony is to be taken.

(2) In a guardianship or conservatorship proceeding, a court in this state may permit a witness located in another state to be deposed or to testify by telephone or audiovisual or other electronic means. A court of this state shall cooperate with the court of the other state in designating an appropriate location for the deposition or testimony. [2009 c.179 §6]

Note: See note under 125.800.

(Article 2 - Jurisdiction)

125.815 Definitions; significant-connection factors. (1) As used in ORS 125.815 to 125.835:

(a) “Emergency” means a circumstance described in ORS 125.600 (1), and for which the appointment of a guardian is necessary because no other person has authority and is willing to act on the respondent’s behalf.

(b) “Home state” means the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months immediately before the filing of a petition for a conservatorship order or the appointment of a guardian, or if none, the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months ending within the six months prior to the filing of the petition.

(c) “Significant-connection state” means a state, other than the home state, with which a respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available.

(2) In determining under ORS 125.820 and 125.837 (5) whether a respondent has a significant connection with a particular state, the court shall consider:

(a) The location of the respondent’s family and other persons required to be notified of the guardianship or conservatorship proceeding;

(b) The length of time the respondent at any time was physically present in the state and the duration of any absence;

(c) The location of the respondent’s property; and

(d) The extent to which the respondent has ties to the state such as voting registration, state or local tax return filing, vehicle registration, driver license, social relationship and receipt of services. [2009 c.179 §7]

Note: See note under 125.800.

125.817 Exclusive basis. ORS 125.815 to 125.835 provide the exclusive jurisdictional basis for a court of this state to appoint a guardian or issue a conservatorship order for an adult under ORS 125.800 to 125.852. [2009 c.179 §8]

Note: See note under 125.800.

125.820 Jurisdiction. A court of this state has jurisdiction to appoint a guardian or issue a conservatorship order for a respondent if:

(1) This state is the respondent’s home state;

(2) On the date the petition is filed, this state is a significant-connection state and:

(a) The respondent does not have a home state or a court of the respondent's home state has declined to exercise jurisdiction because this state is a more appropriate forum; or

(b) The respondent has a home state, a petition for an appointment or order is not pending in a court of that state or another significant-connection state and, before the court makes the appointment or issues the order:

(A) A petition for an appointment or order is not filed in the respondent's home state;

(B) An objection to the court's jurisdiction is not filed by a person required to be notified of the proceeding; and

(C) The court in this state concludes that it is an appropriate forum under the factors set forth in ORS 125.827;

(3) This state does not have jurisdiction under either subsection (1) or (2) of this section, the respondent's home state and all significant-connection states have declined to exercise jurisdiction because this state is the more appropriate forum and jurisdiction in this state is consistent with the Oregon and United States Constitutions; or

(4) The requirements for special jurisdiction under ORS 125.822 are met. [2009 c.179 §9]

Note: See note under 125.800.

125.822 Special jurisdiction. (1) A court of this state lacking jurisdiction under ORS 125.820 has special jurisdiction to do any of the following:

(a) Appoint a guardian in an emergency as provided for the appointment of a temporary fiduciary under ORS 125.600 for a respondent who is physically present in this state;

(b) Issue a conservatorship order with respect to real or tangible personal property located in this state; or

(c) Appoint a guardian or conservator for an incapacitated or protected person for whom a provisional order to transfer the proceeding from another state has been issued under procedures similar to ORS 125.837.

(2) If a petition was filed for the appointment of a temporary fiduciary under ORS 125.600 and this state was not the respondent's home state on the date the petition was filed, the court shall dismiss the proceeding at the request of the court of the home state, if any, whether the dismissal is requested before or after the emergency appointment. [2009 c.179 §10]

Note: See note under 125.800.

125.825 Exclusive and continuing jurisdiction. Except as provided in ORS 125.822, a court that has appointed a guardian or issued a conservatorship order consistent with ORS 125.800 to 125.852 has exclusive and continuing jurisdiction over the proceeding until the proceeding is terminated by the court or the appointment or order expires by its own terms. [2009 c.179 §11]

Note: See note under 125.800.

125.827 Appropriate forum. (1) A court of this state having jurisdiction under ORS 125.820 to appoint a guardian or issue a conservatorship order may decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum.

(2) If a court of this state declines to exercise its jurisdiction under subsection (1) of this section, the court shall either dismiss or stay the proceeding. The court may impose any condition the court considers just and proper, including the condition that a petition for the appointment of a guardian or issuance of a conservatorship order be filed promptly in another state.

(3) In determining whether it is an appropriate forum, the court shall consider all relevant factors, including:

- (a) Any expressed preference of the respondent;
- (b) Whether abuse, neglect or exploitation of the respondent has occurred or is likely to occur and which state could best protect the respondent from the abuse, neglect or exploitation;
- (c) The length of time the respondent was physically present in or was a legal resident of this or another state;
- (d) The distance of the respondent from the court in each state;
- (e) The financial circumstances of the respondent's estate;
- (f) The nature and location of the evidence;
- (g) The ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence;
- (h) The familiarity of the court of each state with the facts and issues in the proceeding; and
- (i) If an appointment were made, the court's ability to monitor the conduct of the guardian or conservator. [2009 c.179 §12]

Note: See note under 125.800.

125.830 Jurisdiction declined by reason of conduct. (1) If at any time a court of this state determines that it acquired jurisdiction to appoint a guardian or issue a conservatorship order because of unjustifiable conduct, the court may:

- (a) Decline to exercise jurisdiction;
- (b) Exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety and welfare of the respondent or the protection of the respondent's property or prevent a repetition of the unjustifiable conduct, including staying the proceeding until a petition for the appointment of a guardian or issuance of a conservatorship order is filed in a court of another state having jurisdiction; or
- (c) Continue to exercise jurisdiction after considering:
 - (A) The extent to which the respondent and all persons required to be notified of the proceedings have acquiesced in the exercise of the court's jurisdiction;
 - (B) Whether the court is a more appropriate forum than the court of any other state under the factors set forth in ORS 125.827 (3); and
 - (C) Whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of ORS 125.820.

(2) If a court of this state determines that it acquired jurisdiction to appoint a guardian or issue a conservatorship order because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, it may assess against that party necessary and reasonable expenses, including attorney fees, investigative fees, court costs, communication expenses, witness fees and expenses and travel expenses. The court may not assess fees, costs or expenses of any kind against this state or a governmental subdivision, agency or instrumentality of this state unless authorized by law other than ORS 125.800 to 125.852. [2009 c.179 §13]

Note: See note under 125.800.

125.832 Notice of proceeding. If a petition for the appointment of a guardian or issuance of a conservatorship order is brought in this state and this state was not the respondent's home state on the date the petition was filed, in addition to complying with the notice requirements of this state, notice of the petition must be given to those persons who would be entitled to notice of the petition if a proceeding were brought in the respondent's home state. The notice must be given in the same manner as notice is required to be given in this state. [2009 c.179 §14]

Note: See note under 125.800.

125.835 Proceedings in more than one state. Except for a petition for the appointment of a temporary fiduciary under ORS 125.600 or issuance of a conservatorship order limited to property located in this state under ORS 125.822 (1)(a) or (b), if a petition for the appointment of a guardian or issuance of a conservatorship order is filed in this state and in another state and neither petition has been dismissed or withdrawn, the following rules apply:

(1) If the court in this state has jurisdiction under ORS 125.820, it may proceed with the case unless a court in another state acquires jurisdiction under provisions similar to ORS 125.820 before the appointment or issuance of the order.

(2) If the court in this state does not have jurisdiction under ORS 125.820, whether at the time the petition is filed or at any time before the appointment or issuance of the order, the court shall stay the proceeding and communicate with the court in the other state. If the court in the other state has jurisdiction, the court in this state shall dismiss the petition unless the court in the other state determines that the court in this state is a more appropriate forum. [2009 c.179 §15]

Note: See note under 125.800.

(Article 3 - Transfer)

125.837 Transfer of guardianship or conservatorship to another state. (1) A guardian or conservator appointed in this state may petition the court to transfer the guardianship or conservatorship to another state.

(2) Notice of a petition under subsection (1) of this section must be given to the persons that would be entitled to notice of a petition in this state for the appointment of a guardian or conservator.

(3) On the court's own motion or on request of the guardian or conservator, the incapacitated or protected person, or other person required to be notified of the petition, the court shall hold a hearing on a petition filed pursuant to subsection (1) of this section.

(4) The court shall issue an order provisionally granting a petition to transfer a guardianship and shall direct the guardian to petition for guardianship in the other state if the court is satisfied that the guardianship will be accepted by the court in the other state and the court finds that:

(a) The incapacitated person is physically present in or is reasonably expected to move permanently to the other state;

(b) An objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the incapacitated person; and

(c) Plans for care and services for the incapacitated person in the other state are reasonable and sufficient.

(5) The court shall issue a provisional order granting a petition to transfer a conservatorship and shall direct the conservator to petition for conservatorship in the other state if the court is satisfied that the conservatorship will be accepted by the court of the other state and the court finds that:

(a) The protected person is physically present in or is reasonably expected to move permanently to the other state, or the protected person has a significant connection to the other state considering the factors in ORS 125.815 (2);

(b) An objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the protected person; and

(c) Adequate arrangements will be made for management of the protected person's property.

(6) The court shall issue a final order confirming the transfer and terminating the guardianship or conservatorship upon its receipt of:

(a) A provisional order accepting the proceeding from the court to which the proceeding is to be transferred which is issued under provisions similar to ORS 125.840; and

(b) The documents required to terminate a guardianship or conservatorship in this state.

[2009 c.179 §16]

Note: See note under 125.800.

125.840 Accepting guardianship or conservatorship transferred from another state. (1)

To confirm transfer of a guardianship or conservatorship transferred to this state under provisions similar to ORS 125.837, the guardian or conservator must petition the court in this state to accept the guardianship or conservatorship. The petition must include a certified copy of the other state's provisional order of transfer.

(2) Notice of a petition under subsection (1) of this section must be given to those persons that would be entitled to notice if the petition were a petition for the appointment of a guardian or issuance of a conservatorship order in both the transferring state and this state. The notice must be given in the same manner as notice is required to be given in this state.

(3) On the court's own motion or on request of the guardian or conservator, the incapacitated or protected person, or other person required to be notified of the proceeding, the court shall hold a hearing on a petition filed pursuant to subsection (1) of this section.

(4) The court shall issue an order provisionally granting a petition filed under subsection (1) of this section unless:

(a) The court determines that transfer of the proceeding would be contrary to the interests of the incapacitated or protected person; or

(b) The guardian or conservator is ineligible for appointment in this state.

(5) The court shall issue a final order accepting the proceeding and appointing the guardian or conservator as guardian or conservator in this state upon its receipt from the court from which the proceeding is being transferred of a final order issued under provisions similar to ORS 125.837 transferring the proceeding to this state.

(6) Not later than 90 days after issuance of a final order accepting transfer of a guardianship or conservatorship, the court shall determine whether the guardianship or conservatorship needs to be modified to conform to the law of this state.

(7) In granting a petition under this section, the court shall recognize a guardianship or conservatorship order from the other state, including the determination of the incapacitated or protected person's incapacity and the appointment of the guardian or conservator.

(8) The denial by a court of this state of a petition to accept a guardianship or conservatorship transferred from another state does not affect the ability of the guardian or conservator to seek appointment as guardian or conservator in this state under ORS chapter 125 if the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer. [2009 c.179 §17]

Note: See note under 125.800.

(Article 4 - Registration and Recognition of Orders from Other States)

125.842 Registration of guardianship orders; fee. If a guardian has been appointed in another state and a petition for the appointment of a guardian is not pending in this state, the guardian appointed in the other state, after giving notice to the appointing court of an intent to register, may register the guardianship order in this state by filing as a foreign judgment in a court, in any appropriate county of this state, certified copies of the order and letters of office. The person registering the order, and any other person making an appearance in the proceeding, must pay the filing fee established under ORS 21.145. [2009 c.179 §18; 2011 c.595 §36]

Note: Section 38, chapter 595, Oregon Laws 2011, provides:

Sec. 38. The amendments to ORS 24.115, 24.135, 109.787, 110.426, 125.842 and 125.845 by sections 32 to 37 of this 2011 Act apply only to proceedings commenced on or after October 1, 2011. [2011 c.595 §38]

Note: See note under 125.800.

125.845 Registration of conservatorship orders; fee. If a conservator has been appointed in another state and a petition for a conservatorship order is not pending in this state, the conservator appointed in the other state, after giving notice to the appointing court of an intent to register, may register the conservatorship order in this state by filing as a foreign judgment in a court of this state, in any county in which property belonging to the protected person is located, certified copies of the order and letters of office and of any bond. The person registering the order, and any other person making an appearance in the proceeding, must pay the filing fee established under ORS 21.145. [2009 c.179 §19; 2011 c.595 §37]

Note: See note under 125.800.

Note: See first note under 125.842.

125.847 Effect of registration. (1) Upon registration of a guardianship or conservatorship order from another state, the guardian or conservator may exercise in this state all powers

authorized in the order of appointment except as prohibited under the laws of this state, including maintaining actions and proceedings in this state and, if the guardian or conservator is not a resident of this state, subject to any conditions imposed upon nonresident parties.

(2) A court of this state may grant any relief available under ORS 125.800 to 125.852 and other law of this state to enforce a registered order. [2009 c.179 §20]

Note: See note under 125.800.

(Article 5 - Miscellaneous Provisions)

125.850 Uniformity of application and construction. In applying and construing ORS 125.800 to 125.852, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. [2009 c.179 §21]

Note: See note under 125.800.

125.852 Relation to Electronic Signatures in Global and National Commerce Act. ORS 125.800 to 125.852 modify, limit and supersede the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq., but do not modify, limit or supersede section 1(c) of that Act, 15 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in section 3(b) of that Act, 15 U.S.C. 7003(b). [2009 c.179 §22]

Note: See note under 125.800.

FISCAL IMPACT OF PROPOSED LEGISLATION

Measure: HB 2671

Seventy-Seventh Oregon Legislative Assembly – 2013 Regular Session
Legislative Fiscal Office

*Only Impacts on Original or Engrossed
Versions are Considered Official*

Prepared by: Kim To
Reviewed by: Ken Rocco, Daron Hill, Laurie Byerly, Steve Bender, Monica Brown, Paul Siebert
Date: 3/15/2013

Measure Description:

Creates State Office of the Public Guardian and Conservator to provide public guardian and conservator services for persons without relatives or friends willing or able to serve as guardians or conservators.

Government Unit(s) Affected:

Oregon Judicial Department (OJD), Department of Justice (DOJ), Oregon State Police (OSP), Legislative Fiscal Office (LFO), Department of Administrative Services (DAS)

Local Government Mandate:

This bill does not affect local governments' service levels or shared revenues sufficient to trigger Section 15, Article XI of the Oregon Constitution.

Analysis:

House Bill 2671 creates a new state agency, the State Office of the Public Guardian and Conservator (SOPGC), to provide public guardian and conservator services for Oregonians who do not have relatives or friends willing or able to assume the duties of guardian or conservator, and who lack the financial resources to obtain private fiduciary services. The administrative head of this new state agency will be appointed by the Governor. The administrative head is authorized to adopt rules, hire staff, and enter into professional contracts to carry out the duties of the office.

The State Office of the Public Guardian and Conservator (SOPGC)

The fiscal impact of creating this new state agency is indeterminate depending on the number of clients served, and how the newly appointed administrative head decides to staff and operate this new state agency. The following rough estimates and information contained in this fiscal are meant to serve as a point of reference for further analysis upon receipt of a more concrete plan for the agency. Extrapolating from a variety of benchmark sources from within Oregon state government, and counties, as well as information from other states with existing public guardian and conservator programs, the fiscal impact of creating this new state agency could range roughly from \$1.9 million to \$3.7 million depending on an amalgamation of factors including:

Number of Clients/Wards

The bill stipulates that the courts may not appoint this new office as fiduciary for an individual unless the office has petitioned for the appointment; therefore the office has some control over the number of clients/wards served. The state will only serve as a guardian of last resort for wards who do not have relatives or friends willing or able to assume the duties of guardian or conservator, and who lack the financial resources for private fiduciary services. This bill is a result of the work of the Joint Interim Task Force on Public Guardian and Conservator, established by HB 2237 (2011). Although this task force has data to suggest that the unmet need is significantly higher, the task force believes 250 to 300 clients/wards served annually by the SOPGC is an attainable starting target. Solely for consistency in discussion, the calculations in this fiscal are based on this target number of 250 to 300 clients/wards served annually provided by the task force.

Staffing

The bill authorizes the administrative head of this agency to adopt rules, hire staff, and enter into professional contracts to carry out the duties of the office. Section 4 of the bill stipulates some of the services that SOPGC must provide. In addition to guardian and conservator skill sets (which include legal, medical, real estate, accounting and other financial expertise), the staff will need training/education, volunteer recruitment/training/management, contract management, and fundraising skills. At this time, it is unknown how the administrative head will choose to staff and/or use contract professional services. The level of staffing would have an impact on how clients are served, as well as the number of clients served, and the guardian/conservator to client ratio. The Department of Human Services provided three possible scenarios for staffing models that totaled:

- 10 FTEs and \$1.9 million per biennium
- 14 FTEs and \$2.9 million per biennium
- 18 FTEs and \$3.7 million per biennium.

In addition, the Department of Administrative Services provided an independent scenario that totaled 12 FTEs and \$2.4 million per biennium.

In addition to the number of employees, this range for Personal Services, and related Services and Supplies could fluctuate depending on actual vendor responses to more concrete requests for proposals for products and services such as: (1) contracts with professional guardians/conservators; (2) case management software and service contracts; (3) storage rental for the secure custody of clients' possessions; and (4) research service to help the office locate and contact relatives. The bill requires SOPGC to conduct a needs assessment before filing a petition for appointment of a fiduciary. One requirement of the needs assessment is locating and inquiring on whether any other person may be willing and able to serve as the potential client's guardian or conservator. The bill also requires SOPGC to create and execute a plan outlining the type and duration of services to be provided by the office to each person determined to be eligible for public guardian and conservator services. Furthermore, the new office may incur other expenses yet unidentified. For example: note that although the bill stipulates that a court may not charge SOPGC a fee for the filing of a petition or any other pleading by SOPGC, and prohibits the courts from ordering SOPGC to pay court costs or attorney fees in a proceeding brought on behalf of a SOPGC client, the bill is silent regarding the entity responsible for covering expenses such as court visitors. SOPGC may end up being held responsible for this and similar expenses.

Advisory Committee

The bill establishes a seven-member Public Guardian and Conservator Advisory Committee to advise and monitor the work of SOPGC. The bill specifies that the members of this committee must meet at least once a month. ORS 292.495 allows the compensation and reimbursement of expenses of similar state board or commission to be subject to the availability of funds in the budget of that agency. If SOPGC chooses to reimburse members of this advisory committee, the cost would vary depending on the frequency and location of committee meetings, as well as the number and geographic location of commission members. In addition, many similar boards and committees chose to have meetings in differing locations throughout the state in order to provide access and enable stakeholder involvement statewide. Meeting costs for this advisory committee could include rental of facilities and equipment, as well as the cost of printing and distributing meeting documents. As a point of reference, note that mileage reimbursement alone for one member travelling from Medford to Portland for one meeting at the current rate is approximately \$400.

Certification

HB 2671 requires SOPGC to certify staff and volunteers as public guardians and conservators. At this time, it is unknown how many individuals SOPGC will need to certify in a given biennium. In addition, it is unknown whether the new agency will use existing certifying entities or establish its own certification process. Currently, the Oregon Certified Professional Fiduciary Certification is a voluntary program. An individual must be a Nationally Certified Guardian through the Center for Guardianship Certification to become an Oregon Certified Professional Fiduciary. The application, exam and background check fees for certification is approximately \$575 per person, with a

recertification fee of \$250 required every three years. In addition, SOPGC will need staff and resources to track and manage the external certification of staff and volunteers. Alternatively, if SOPGC decides to establish its own certification process, the agency will need staffing and resources to implement and maintain this independent certification process.

Funding Source

Public conservator and guardian programs in other states are mostly funded with state general fund supplemented with other funds revenues from client fees, estate recovery, interests on trust accounts, foundation grants, and private donations. Some states supplement general fund by leveraging federal funds through Medicaid Targeted Case Management, and Social Services Block Grants. This bill allows SOPGC to solicit and accept gifts, grants and donations from public and private sources. At this time, it is unknown if SOPGC will be able to obtain moneys from these other funds and federal funds resources.

Department of Justice (DOJ)

Extrapolating from the caseload of the public guardianship and conservatorship program in Multnomah county, the Department of Justice estimates the fiscal impact of this bill to be approximately \$336,586 and 1.50 FTEs per biennium. If this bill passes, DOJ anticipates establishing two positions: One full-time Assistant Attorney General to handle the probate contested cases and motion practice; and one half-time Legal Secretary to schedule and prepare motions and pleadings.

Oregon Judicial Department (OJD)

The fiscal impact of this bill on state courts is indeterminate depending on the number and scope of petitions filed by SOPGC in a given biennium. The bill stipulates that a court may not charge a fee for the filing of a petition or any other pleading by SOPGC. The bill also prohibits the court from ordering SOPGC to pay court costs or attorney fees in a proceeding brought on behalf of a SOPGC client. The Judicial Department reports that the current average cost for a probate case, which includes guardianship and conservatorship cases, is approximately \$298 per case. Assuming a target number of 250 to 300 petitions a year, OJD estimates the biennial impact to average between \$123,041 and \$164,054 a biennium.

Oregon State Police (OSP)

The bill requires individuals providing authorized public guardian and conservator services, or has personal contact with a client/ward through SOPGC to undergo a criminal records check, including fingerprint identification. OSP anticipates absorbing this increase in workload with existing staff and resources.

Department of Administrative Services (DAS) and Legislative Fiscal Office (LFO)

As a new state agency, the State Office of the Public Guardian and Conservator's budget will be subject to Executive Branch review, and approval or modification by the Legislative Assembly. DAS and LFO will use existing staff and resources to absorb this increase in workload.

House Bill 2671

3

Sponsored by Representative DOHERTY

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 **as introduced**.

Creates State Office of the Public Guardian and Conservator to provide public guardian and conservator services for persons without relatives or friends willing or able to serve as guardians or conservators. Directs Governor to appoint Public Guardian and Conservator as administrative head of office. Prescribes duties and responsibilities of Public Guardian and Conservator and office. Requires office to certify and train deputy public guardians and conservators. Requires office to develop volunteer program to assist office. Imposes certain limitations on court orders in proceedings brought by office.

Establishes Public Guardian and Conservator Advisory Committee.

Renames existing offices of public guardian and conservator as county offices of public guardian and conservator.

Creates State Office of the Public Guardian and Conservator Fund and continuously appropriates moneys in fund to State Office of the Public Guardian and Conservator.

A BILL FOR AN ACT

Relating to fiduciary services in probate courts for persons with inadequate resources; creating new provisions; ^{and} amending ORS 125.240, 125.410, 125.700, 125.705, 125.710, 125.715, 125.720, 125.725 and 125.730; and appropriating money. 441.109 and 441.153

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

~~STATE OFFICE OF THE PUBLIC GUARDIAN AND CONSERVATOR~~

~~SECTION 1. Sections 2 to 10 of this 2013 Act are added to and made a part of ORS chapter 125.~~

~~SECTION 2. For purposes of sections 2 to 10 of this 2013 Act:~~

~~(1) "Client" means a person who receives public guardian and conservator services from the State Office of the Public Guardian and Conservator.~~

~~(2) "Deputy public guardian and conservator" means a person who is employed by or under contract with the office, who is certified by the office and who provides services as a fiduciary appointed by the court to clients under sections 2 to 10 of this 2013 Act.~~

~~(3) "Public guardian and conservator services" means services, including but not limited to information, assistance, legal representation and services as a court-appointed fiduciary in guardianship or conservatorship proceedings that are provided by deputy public guardians and conservators, volunteers and staff in the office.~~

~~SECTION 3. (1) The State Office of the Public Guardian and Conservator is established, to function separately and independently from any other state agency.~~

~~(2) The Governor shall appoint the Public Guardian and Conservator, subject to Senate confirmation under ORS 171.562 and 171.565, for a four-year term from a list of three nominees nominated by the Public Guardian and Conservator Advisory Committee established~~

DELETE PAGES 2 THROUGH 10 AND INSERT AMENDMENT

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.

**PROPOSED AMENDMENTS TO
HOUSE BILL 2671**

1 On page 1 of the printed bill, line 3, after “provisions;” insert “and” and
2 delete “and” and insert a comma.

3 In line 4, delete “; and appropriating money” and insert “, 441.109 and
4 441.153”.

5 Delete lines 6 through 25 and delete pages 2 through 10 and insert:

6

7 **“THE OREGON PUBLIC GUARDIAN AND CONSERVATOR**

8

9 **“SECTION 1. Sections 2 to 9 of this 2013 Act are added to and made**
10 **a part of ORS chapter 125.**

11 **“SECTION 2. For purposes of sections 2 to 9 of this 2013 Act:**

12 **“(1) ‘Client’ means a person who receives public guardian and**
13 **conservator services from the Oregon Public Guardian and**
14 **Conservator.**

15 **“(2) ‘Deputy public guardian and conservator’ means the person**
16 **who is employed by or under contract with the Oregon Public Guard-**
17 **ian and Conservator, who is certified by the Oregon Public Guardian**
18 **and Conservator and who provides services as a fiduciary appointed**
19 **by the court to clients under sections 2 to 9 of this 2013 Act.**

20 **“(3) ‘Public guardian and conservator services’ means services, in-**
21 **cluding but not limited to information, assistance and services as a**
22 **court-appointed fiduciary in guardianship or conservatorship pro-**

1 ceedings that are provided by deputy public guardians and
2 conservators, volunteers and staff under the supervision and control
3 of the Oregon Public Guardian and Conservator.

4 **“SECTION 3.** The Governor shall appoint the Oregon Public
5 Guardian and Conservator, subject to Senate confirmation under ORS
6 171.562 and 171.565, for a four-year term from a list of two or three
7 nominees nominated by the Long Term Care Ombudsman. The Oregon
8 Public Guardian and Conservator serves at the pleasure of the Gover-
9 nor and may be removed by the Governor for good cause or upon the
10 recommendation of the Oregon Public Guardian and Conservator Ad-
11 visory Committee established under section 8 of this 2013 Act. If there
12 is a vacancy for any cause, the Governor shall make an appointment
13 within 60 days. The Oregon Public Guardian and Conservator shall
14 receive a salary as fixed by the Governor and be reimbursed for all
15 reasonable travel and other expenses incurred in the performance of
16 official duties.

17 **“(2)** The Oregon Public Guardian and Conservator shall be respon-
18 sible for carrying out the duties and function of the Oregon Public
19 Guardian and Conservator pursuant to sections 2 to 9 of this 2013 Act,
20 within the office of the Long Term Care Ombudsman, and subject to
21 the direction, supervision and control of the Long Term Care Om-
22 budsman.

23 **“(3)** The Oregon Public Guardian and Conservator may hire or
24 contract with one full-time deputy public guardian and conservator
25 and one staff person to carry out the powers, duties and functions of
26 the Oregon Public Guardian and Conservator. The Oregon Public
27 Guardian and Conservator may prescribe the duties and assignments
28 and fix the compensation of persons hired by or under contract with
29 the Oregon Public Guardian and Conservator, subject to the State
30 Personnel Relations Law. Subject to any other applicable laws regu-

1 lating expenses, the persons hired by or under contract with the
2 Oregon Public Guardian and Conservator shall be allowed reasonable
3 travel and other expenses incurred in the performance of official du-
4 ties.

5 “(4) The Oregon Public Guardian and Conservator may delegate the
6 exercise or discharge of any power, duty or function that is vested in
7 or imposed by law upon the Oregon Public Guardian and Conservator
8 to the deputy public guardian and conservator or staff person hired
9 by or under contract with the Oregon Public Guardian and
10 Conservator for the purpose of conducting an official act in the name
11 of the Oregon Public Guardian and Conservator. The official act of any
12 person acting in the name of the Oregon Public Guardian and
13 Conservator by the authority of the Oregon Public Guardian and
14 Conservator is an official act of the Oregon Public Guardian and
15 Conservator.

16 “(5) The Oregon Public Guardian and Conservator may solicit and
17 accept gifts, grants and donations from public and private sources for
18 the purpose of carrying out the provisions of sections 2 to 9 of this 2013
19 Act, which moneys shall be deposited in the Long Term Care Om-
20 budsman Account established under ORS 441.153.

21 “(6) In accordance with applicable provisions of ORS chapter 183,
22 the Oregon Public Guardian and Conservator, in consultation with the
23 Long Term Care Ombudsman and the Oregon Public Guardian and
24 Conservator Advisory Committee, may adopt rules to carry out the
25 provisions of sections 2 to 9 of this 2013 Act.

26 **“SECTION 4.** The Oregon Public Guardian and Conservator shall:

27 “(1) Educate the public about the role and function of the Oregon
28 Public Guardian and Conservator and about public guardian and
29 conservator services.

30 “(2) Provide public guardian and conservator services for persons

1 who do not have relatives or friends willing or able to assume the
2 duties of guardianship or conservatorship and for persons who lack the
3 financial resources to obtain a private guardian or conservator.

4 “(3) Certify the deputy public guardian and conservator.

5 “(4) Develop model standards of eligibility and professional conduct
6 for the deputy public guardian and conservator and of practice and
7 procedure in public guardianship and conservatorship proceedings.

8 “(5) Develop and implement training and educational materials for
9 the deputy public guardian and conservator.

10 “(6) Establish and operate a program to recruit, train and supervise
11 volunteers to provide assistance to the Oregon Public Guardian and
12 Conservator, the deputy public guardian and conservator and clients.

13 “(7) Establish a process, including criteria and standards, to deter-
14 mine the eligibility of persons to receive public guardian and
15 conservator services and for the needs assessment required under
16 section 5 of this 2013 Act.

17 “(8) Cooperate with county offices of public guardian and
18 conservator operating under ORS 125.700.

19 “(9) Work with existing local and county programs and with other
20 organizations and entities to develop and expand public guardian and
21 conservator services in this state.

22 “(10) Make recommendations to the Legislative Assembly for policy
23 and legislation regarding implementation, improvement and expansion
24 of public guardian and conservator services in this state.

25 **“SECTION 5. (1) In providing public guardian and conservator ser-**
26 **vices, the Oregon Public Guardian and Conservator shall conduct a**
27 **needs assessment for a person who is claimed to not have relatives or**
28 **friends willing or able to assume the duties of guardianship or con-**
29 **servatorship or who lacks the financial resources to obtain a private**
30 **guardian or conservator. The purpose of the needs assessment is to**

1 determine the person's eligibility to receive public guardian and
2 conservator services and to determine the appropriateness of filing a
3 petition for the appointment of a fiduciary or other pleading on behalf
4 of the person in a court having probate jurisdiction. The assessment
5 shall, at a minimum:

6 “(a) Assess the person's capacity to:

7 “(A) Care for the person's own safety;

8 “(B) Manage the person's own financial affairs; and

9 “(C) Attend to and provide for necessities such as food, shelter,
10 clothing and medical care;

11 “(b) Assess the person's financial resources, based on information
12 available or supplied to the Oregon Public Guardian and Conservator
13 at the time of the assessment;

14 “(c) Determine whether the available information about the person
15 is sufficient to support a finding that the person is incapacitated or
16 financially incapable, and the entry of a court order for the appoint-
17 ment of a fiduciary under ORS 125.010;

18 “(d) Inquire whether any other person may be willing and able to
19 serve as the person's guardian or conservator and, if appropriate, lo-
20 cate and contact that other person;

21 “(e) Determine the type of fiduciary, if any, to request in a petition
22 filed under ORS 125.055, giving preference to the least intrusive form
23 of fiduciary relationship consistent with the best interests of the per-
24 son; and

25 “(f) Determine how best to provide public guardian and conservator
26 services to the person that are least restrictive to the person's liberty,
27 that are least intrusive to the person and that provide for the greatest
28 degree of independence that the person is capable of exercising.

29 “(2) For each person determined to be eligible for public guardian
30 and conservator services under this section, the Oregon Public

1 Guardian and Conservator shall develop a written plan setting forth
2 the type and duration of services to be provided by the Oregon Public
3 Guardian and Conservator. The plan shall be included in any non-
4 emergency petition or pleading filed with the court.

5 **“SECTION 6. (1) The deputy public guardian and conservator pro-**
6 **viding public guardian and conservator services under sections 2 to 9**
7 **of this 2013 Act:**

8 **“(a) Must be certified as the deputy public guardian and conservator**
9 **by the Oregon Public Guardian and Conservator; and**

10 **“(b) If appointed by the court as public guardian and conservator**
11 **for a client, shall serve as provided in this chapter and ORS 127.005 and**
12 **127.015, except as expressly stated otherwise in sections 2 to 9 of this**
13 **2013 Act.**

14 **“(2) A volunteer who, in the course of providing authorized public**
15 **guardian and conservator services, has personal contact with a client**
16 **must provide, in writing, the volunteer’s criminal history and must**
17 **submit or consent to a criminal records check, including fingerprint**
18 **identification.**

19 **“(3) Volunteers of the Oregon Public Guardian and Conservator:**

20 **“(a) May not conduct the needs assessments required under section**
21 **5 of this 2013 Act;**

22 **“(b) May not engage in conduct that constitutes the unlicensed**
23 **practice of law;**

24 **“(c) Shall be under the supervision and control of the Oregon Public**
25 **Guardian and Conservator or of the deputy public guardian and**
26 **conservator;**

27 **“(d) Shall be instructed in confidentiality and shall maintain the**
28 **confidentiality of clients and of written information and materials re-**
29 **lating to clients;**

30 **“(e) May not receive compensation or any other benefit but may**

1 be reimbursed for reasonable travel and other expenses incurred in the
2 performance of their duties on behalf of the Oregon Public Guardian
3 and Conservator; and

4 “(f) Are immune from civil liability for any acts or omissions oc-
5 ccurring, or errors in judgment made in good faith, in the course of
6 providing authorized public guardian and conservator services.

7 **“SECTION 7. (1) A court may not appoint the Oregon Public**
8 **Guardian and Conservator or deputy public guardian and conservator**
9 **as a fiduciary for a person unless the Oregon Public Guardian and**
10 **Conservator or deputy public guardian and conservator has petitioned**
11 **for or consented to the appointment.**

12 **“(2) The Oregon Public Guardian and Conservator shall file an of-**
13 **ficial bond in such amount as may be fixed from time to time by the**
14 **Long Term Care Ombudsman, in consultation with the Oregon Public**
15 **Guardian and Conservator Advisory Committee, or the court having**
16 **probate jurisdiction. The bond shall inure to the joint benefit of the**
17 **several public guardianship and conservatorship estates in which the**
18 **Oregon Public Guardian and Conservator is providing services but a**
19 **bond is not required to be filed in individual estates.**

20 **“(3) The court may not charge a fee for the filing of a petition or**
21 **any other pleading under this chapter by the Oregon Public Guardian**
22 **and Conservator or deputy public guardian and conservator when the**
23 **filing is made in connection with the provision of public guardian and**
24 **conservator services under sections 2 to 9 of this 2013 Act.**

25 **“(4)(a) The court shall order the client or the client’s estate to pay**
26 **for reasonable expenses incurred, including compensation for services**
27 **rendered, in the provision of public guardian and conservator services**
28 **to the client, including but not limited to court costs and attorney**
29 **fees.**

30 **“(b) If a client is indigent, the Oregon Public Guardian and**

1 Conservator and the office of the Long Term Care Ombudsman shall
2 have a claim against the client or the client's estate for the portion
3 of any payment ordered under paragraph (a) of this subsection that
4 remains unpaid.

5 “(5) The court may not order the Oregon Public Guardian and
6 Conservator, the deputy public guardian and conservator or the office
7 of the Long Term Care Ombudsman to pay court costs or attorney fees
8 in a proceeding brought on behalf of a client under sections 2 to 9 of
9 this 2013 Act.

10 **“SECTION 8. (1) There is established the Oregon Public Guardian**
11 **and Conservator Advisory Committee consisting of the Long Term**
12 **Care Ombudsman, or the Long Term Care Ombudsman's designee and**
13 **six members to be appointed in the following manner:**

14 **“(a) One person appointed by the Speaker of the House of Repre-**
15 **sentatives;**

16 **“(b) One person appointed by the President of the Senate;**

17 **“(c) One person appointed by the House Minority Leader;**

18 **“(d) One person appointed by the Senate Minority Leader;**

19 **“(e) Two persons, to be appointed by the Governor, from a list of**
20 **four names submitted by individuals and organizations that provide**
21 **guardianship and conservatorship services in this state.**

22 **“(2) Members described in subsection (1)(e) of this section are sub-**
23 **ject to confirmation by the Senate under ORS 171.562 and 171.565.**

24 **“(3) The term of office of each member is four years. Before the**
25 **expiration of the term of a member, the appointing authority shall**
26 **appoint a successor whose term begins on July 1 next following. A**
27 **member is eligible for reappointment. If there is a vacancy for any**
28 **cause, the appointing authority shall make an appointment to become**
29 **immediately effective for the unexpired term.**

30 **“(4) The members of the committee must be residents of this state**

1 who are broadly representative, to the extent possible, of persons who
2 provide guardianship and conservatorship and other fiduciary services
3 to persons in this state, who have knowledge and interest in the
4 problems of persons who have inadequate resources to obtain their
5 own fiduciary services and who are representative of all areas of this
6 state.

7 “(5) The committee shall select one of its members as chairperson
8 and another as vice chairperson, for such terms and with duties and
9 powers necessary for the performance of the functions and duties of
10 these offices as the committee determines.

11 “(6) A majority of the members of the committee constitutes a
12 quorum for the transaction of business. Decisions may be made by a
13 majority of the quorum.

14 “(7) The committee shall meet at least once each month at a place,
15 day and hour determined by the committee. The committee also shall
16 meet at other times and places specified by the call of the chairperson
17 or of a majority of the members of the committee. The committee
18 shall confer each month with the Public Guardian and Conservator.

19 “(8) A member of the committee is entitled to compensation and
20 expenses as provided in ORS 292.495.

21 “(9) The office of the Long Term Care Ombudsman shall provide
22 staff support to the committee.

23 **“SECTION 9. The Oregon Public Guardian and Conservator Advi-
24 sory Committee shall:**

25 **“(1) Monitor the Oregon Public Guardian and Conservator.**

26 **“(2) Advise the Governor and the Legislative Assembly on the
27 Oregon Public Guardian and Conservator.**

28 **“(3) Advise the Long Term Care Ombudsman regarding persons to
29 be nominated to become the Oregon Public Guardian and Conservator,
30 according to prescribed criteria.**

1 “(4) Make recommendations to the Governor for removal of the
2 Oregon Public Guardian and Conservator when appropriate.

3 “(5) Consult with the Oregon Public Guardian and Conservator in
4 the adoption of rules to implement the provisions of sections 2 to 9 of
5 this 2013 Act.

6
7 “**COUNTY OFFICES OF PUBLIC GUARDIAN AND CONSERVATOR**

8
9 “**SECTION 10.** ORS 125.700 is amended to read:

10 “125.700. The county court or board of county commissioners of any
11 county:

12 “(1) After making a determination that there exists a need within the
13 county for a guardian or conservator for persons who do not have relatives
14 or friends willing to serve as a guardian or conservator and capable of as-
15 suming the duties of guardianship or conservatorship, may create [*within the*
16 *county*] the **county** office of public guardian and conservator and such sub-
17 ordinate positions as may be necessary to operate effectively the **county** of-
18 fice of public guardian and conservator [*within the county*].

19 “(2) May expend county funds for the purpose of operating the **county**
20 office of public guardian and conservator.

21 “(3) After establishment of the **county** office of public guardian and
22 conservator [*within a county*], upon the finding that the county does not need
23 the service of a public guardian and conservator, may terminate the office.

24 “**SECTION 11.** ORS 125.705 is amended to read:

25 “125.705. (1) The person appointed to the office of **county** public guardian
26 and conservator shall serve in the office at the pleasure of the appointing
27 authority. If the person holding the office of **county** public guardian and
28 conservator [*in a county*] is removed from office, dies, becomes incapacitated
29 or resigns, the removal, death, incapacity or resignation shall operate to re-
30 move [*such*] **the county** public guardian and conservator as guardian and

1 conservator of all estates then under the guardianship and conservatorship
2 of the person.

3 “(2) As used in ORS 125.700 to 125.730, ‘**county public guardian and**
4 **conservator**’ means the person appointed to the county office of public
5 **guardian and conservator created under ORS 125.700.**

6 “**SECTION 12.** ORS 125.710 is amended to read:

7 “125.710. (1) The **county** public guardian and conservator may serve as
8 the guardian or conservator, or both, of any person of whom the court having
9 probate jurisdiction in the county may have jurisdiction. The **county** public
10 guardian and conservator may serve as guardian or conservator upon the
11 petition of any person or upon the [own] petition of the **county** public
12 guardian and conservator.

13 “(2) When appointed as guardian or conservator by the court having
14 probate jurisdiction, the **county** public guardian and conservator shall serve
15 as provided in ORS chapter 125, ORS 127.005 and 127.015, except as specif-
16 ically stated to the contrary in ORS 125.700 to 125.730.

17 “(3) The **county** public guardian and conservator in the discretion of the
18 **county** public guardian and conservator may employ private attorneys if the
19 fees for the attorneys can be defrayed out of funds of the guardianship or
20 conservatorship estate.

21 “**SECTION 13.** ORS 125.715 is amended to read:

22 “125.715. (1) Before entering into office as **county** public guardian and
23 conservator, the person appointed to the office shall file an official bond in
24 such amount as may be fixed from time to time by the board of county
25 commissioners or the court having probate jurisdiction, which bond shall
26 inure to the joint benefit of the several guardianship [or] **and** conservator-
27 ship estates in which the person is acting as guardian or conservator and the
28 county. The **county** public guardian and conservator shall not be required
29 to file bonds in individual estates.

30 “(2) Upon removal of the **county** public guardian and conservator in ac-

1 cordance with the provisions of ORS 125.705, the surety on the **county** public
2 guardian and conservator bond shall be exonerated upon order to that effect
3 of the court having probate jurisdiction in the county.

4 **“SECTION 14.** ORS 125.720 is amended to read:

5 “125.720. All funds coming into the custody of the **county** public guardian
6 and conservator shall be deposited in the county treasury and disbursed by
7 proper warrant, or shall be deposited in one or more banks or invested in
8 one or more insured savings and loan associations authorized to do business
9 within the county, or as provided by ORS 125.445 (5).

10 **“SECTION 15.** ORS 125.725 is amended to read:

11 “125.725. The **county** public guardian and conservator shall have a claim
12 against the ward’s or protected person’s estate for reasonable expenses in-
13 curred in the execution of the guardianship or conservatorship and such
14 compensation for services and those of the attorney of the **county** public
15 guardian and conservator as the court having probate jurisdiction in the
16 county deems just and reasonable. If the **county** public guardian and
17 conservator is compensated by the county for services, any reimbursement
18 of expenses or compensation shall be paid to the county.

19 **“SECTION 16.** ORS 125.730 is amended to read:

20 “125.730. No fee shall be charged or received by any court having probate
21 jurisdiction for the filing of any petition asking for the appointment of the
22 **county** public guardian and conservator **as the guardian or conservator**
23 or for any official service performed by that court in the course of the
24 guardianship or conservatorship proceedings.

25

26

“CONFORMING AMENDMENTS

27

28 **“SECTION 17.** ORS 441.109 is amended to read:

29 “441.109. The office of the Long Term Care Ombudsman shall carry out
30 the following duties:

1 “(1) Investigate and resolve complaints made by or for residents of long
2 term care facilities about administrative actions that may adversely affect
3 their health, safety, welfare or rights, including subpoenaing any person to
4 appear, give sworn testimony or to produce documentary or other evidence
5 that is reasonably material to any matter under investigation.

6 “(2) Undertake, participate in or cooperate with persons and agencies in
7 such conferences, inquiries, meetings or studies as may lead to improvements
8 in the functioning of long term care facilities.

9 “(3) Monitor the development and implementation of federal, state and
10 local laws, regulations and policies that relate to long term care facilities
11 in this state.

12 “(4) Provide information to public agencies about the problems of resi-
13 dents of long term care facilities.

14 “(5) Work closely with cooperative associations and citizen groups in this
15 state.

16 “(6) Widely publicize the Long Term Care Ombudsman’s service, purpose
17 and mode of operation.

18 “(7) Collaborate with the Department of Human Services and the Nursing
19 Home Administrators Board to establish a statewide system to collect and
20 analyze information on complaints and conditions in long term care facilities
21 for the purpose of publicizing improvements and resolving significant prob-
22 lems.

23 “(8) Appoint designees to serve as local representatives of the office in
24 various districts of the state and regularly monitor their functions.

25 “(9) Specify qualifications and duties of designees.

26 “(10) Adopt rules necessary for carrying out ORS 441.100 to 441.133, after
27 consultation with the committee.

28 “(11) Provide periodically, or at least twice annually, a report to the
29 Governor, department and the Legislative Assembly.

30 “(12) Prepare necessary reports with the assistance of the department.

1 **“(13) Supervise, monitor, advise and support the Oregon Public**
2 **Guardian and Conservator appointed under section 3 of this 2013 Act.**

3 **“SECTION 18.** ORS 441.153 is amended to read:

4 “441.153. The Long Term Care Ombudsman Account is established sepa-
5 rate and distinct from the General Fund. All miscellaneous receipts, gifts and
6 federal and other grants received by the Long Term Care Ombudsman shall
7 be deposited into the Long Term Care Ombudsman Account and are contin-
8 uously appropriated to the Long Term Care Ombudsman for carrying out the
9 responsibilities of the Long Term Care Ombudsman **and the Oregon Public**
10 **Guardian and Conservator.**

11 **“SECTION 19.** ORS 125.240 is amended to read:

12 “125.240. (1) If a petition seeks the appointment of a professional fiduciary
13 as described in subsection (5) of this section, the petition must contain the
14 following information in addition to that information required under ORS
15 125.055:

16 “(a) A description of the events that led to the involvement of the pro-
17 fessional fiduciary in the case.

18 “(b) The professional fiduciary’s educational background and professional
19 experience.

20 “(c) The fees charged by the professional fiduciary and whether the fees
21 are on an hourly basis or are based on charges for individual services ren-
22 dered.

23 “(d) The names of providers of direct services to protected persons that
24 are repeatedly used by the professional fiduciary under contract.

25 “(e) The disclosures required under ORS 125.221 if the person nominated
26 to act as fiduciary will employ a person in which the nominated person has
27 a pecuniary or financial interest.

28 “(f) The number of protected persons for whom the person performs
29 fiduciary services at the time of the petition.

30 “(g) Whether the professional fiduciary has ever had a claim against the

1 bond of the fiduciary and a description of the circumstances causing the
2 claim.

3 “(h) Whether the professional fiduciary or any staff with responsibility
4 for making decisions for clients or for management of client assets has ever
5 filed for bankruptcy and the date of filing.

6 “(i) Whether the professional fiduciary or any staff with responsibility for
7 making decisions for clients or for management of client assets has ever been
8 denied a professional license that is directly related to responsibilities of the
9 professional fiduciary, or has ever held a professional license that is directly
10 related to responsibilities of the professional fiduciary that was revoked or
11 canceled. If such a license has been denied, revoked or canceled, the petition
12 must reflect the date of the denial, revocation or cancellation and the name
13 of the regulatory body that denied, revoked or canceled the license.

14 “(j) A statement that the criminal records check required under sub-
15 section (2) of this section does not disqualify the person from acting as a
16 fiduciary.

17 “(k) Whether the professional fiduciary and any staff responsible for
18 making decisions for clients or for management of client assets is or has
19 been certified by a national or state association of professional fiduciaries,
20 the name of any such association and whether the professional fiduciary or
21 other staff person has ever been disciplined by any such association and the
22 result of the disciplinary action.

23 “(L) The name, address and telephone number of the individual who is to
24 act as primary decision maker for the protected person and the name of the
25 person with whom the protected person will have personal contact if that
26 person is not the person who will act as primary decision maker for the
27 protected person.

28 “(2)(a) If a petition seeks the appointment of a professional fiduciary as
29 described in subsection (5) of this section, the professional fiduciary and all
30 staff with responsibility for making decisions for clients or for management

1 of client assets must undergo a criminal records check before the court may
2 appoint the professional fiduciary. The results of the criminal records check
3 shall be provided by the petitioner to the court. Results of criminal records
4 checks submitted to the court are confidential, shall be subject to inspection
5 only by the parties to the proceedings and their attorneys, and shall not be
6 subject to inspection by members of the public except pursuant to a court
7 order entered after a showing of good cause. A professional fiduciary must
8 disclose to the court any criminal conviction of the professional fiduciary
9 that occurs after the criminal records check was performed. The criminal
10 records check under this subsection shall consist of a check for a criminal
11 record in the State of Oregon and a national criminal records check if:

12 “(A) The person has resided in another state within five years before the
13 date that the criminal records check is performed;

14 “(B) The person has disclosed the existence of a criminal conviction; or

15 “(C) A criminal records check in Oregon discloses the existence of a
16 criminal record in another jurisdiction.

17 “(b) The requirements of this subsection do not apply to any person who
18 serves as a **county** public guardian [*or*] **and** conservator, or any staff of a
19 **county** public guardian [*or*] **and** conservator, [*who is*] operating under ORS
20 125.700 to 125.730 or 406.050 [*and who is otherwise required to acquire a*
21 *criminal records check for other purposes*], **or to the Oregon Public**
22 **Guardian and Conservator, the deputy public guardian and**
23 **conservator or the staff or volunteers of the Oregon Public Guardian**
24 **and Conservator, operating under sections 2 to 9 of this 2013 Act, un-**
25 **less the person is otherwise required to submit to a criminal records**
26 **check under ORS 125.700 to 125.730 or sections 2 to 9 of this 2013 Act.**

27 “(3)(a) If a petition seeks the appointment of a **county** public guardian
28 and conservator operating under the provisions of ORS 125.700 to 125.730,
29 **the appointment of the Oregon Public Guardian and Conservator or**
30 **the deputy public guardian and conservator, operating under the pro-**

1 **visions of sections 2 to 9 of this 2013 Act**, or the appointment of a
2 conservator under ORS 406.050 (8), the petition need not contain the infor-
3 mation described in subsection (1)(d) or (L) of this section.

4 “(b) If a **county** public guardian and conservator operating under the
5 provisions of ORS 125.700 to 125.730, **or the Oregon Public Guardian and**
6 **Conservator or the deputy public guardian and conservator, operating**
7 **under the provisions of sections 2 to 9 of this 2013 Act**, is appointed to
8 act as a fiduciary, or a conservator operating under the authority of ORS
9 406.050 (8) is appointed, the **county** public guardian [*or*] **and** conservator,
10 **the Oregon Public Guardian and Conservator or the deputy public**
11 **guardian and conservator** must file with the court within three days after
12 receipt of written notice of the appointment a statement containing the
13 name, address and telephone number of the individual who will act as pri-
14 mary decision maker for the protected person and the name of the person
15 with whom the protected person will have personal contact if the person
16 named as primary decision maker will not have personal contact with the
17 protected person.

18 “(4) If the court appoints a professional fiduciary as described in sub-
19 section (5) of this section, the professional fiduciary must update all infor-
20 mation required to be disclosed by subsection (1) of this section and provide
21 a copy of the updated statement upon the request of the protected person or
22 upon the request of any person entitled to notice under ORS 125.060 (3). The
23 professional fiduciary must provide an updated statement without demand to
24 the court, the protected person and persons entitled to notice under ORS
25 125.060 (3) at any time that there is a change in the information provided
26 under subsection (1)(L) or (3)(b) of this section.

27 “(5) The provisions of this section apply to any person nominated as a
28 fiduciary or serving as a fiduciary who is acting at the same time as a
29 fiduciary for three or more protected persons who are not related to the
30 fiduciary.

1 **“SECTION 20.** ORS 125.410 is amended to read:

2 “125.410. (1) Except as provided in subsection (2) of this section, the court
3 shall require a conservator to furnish a bond conditioned upon faithful dis-
4 charge of all duties of the conservator according to law, with sureties as
5 specified by the court. Unless otherwise directed, the bond must be in the
6 amount of the aggregate capital value of the property of the estate in the
7 control of the conservator plus one year’s estimated income minus the value
8 of securities and money deposited under arrangements requiring an order of
9 the court for their removal and the value of any real property that the
10 conservator, by express limitation of power, lacks power to sell or convey
11 without court authorization.

12 “(2)(a) The court may waive a bond for good cause shown.

13 “(b) Subsection (1) of this section does not affect the provisions of ORS
14 709.240, relating to a trust company acting as fiduciary, ORS 125.715, relating
15 to a **county public guardian and conservator** acting as fiduciary, **section**
16 **7 of this 2013 Act, relating to the Oregon Public Guardian and**
17 **Conservator or the deputy public guardian and conservator acting as**
18 **fiduciary under sections 2 to 9 of this 2013 Act,** or ORS 406.050 (8), re-
19 lating to the Department of Veterans’ Affairs acting as fiduciary.

20 “(3) Sureties for a bond required under this section are jointly and se-
21 verally liable with the conservator and with each other.

22 “(4) Letters of conservatorship may not be issued until the bond required
23 by this section is approved by the court.

24 “(5) The bond of the conservator continues in effect until the sureties on
25 the bond are released by order of the court.

26 “(6) The court may at any time increase or reduce the amount of the bond
27 required of a conservator for the protection of the protected person and the
28 estate of the protected person.

29 “(7) If a surety on a bond required by this section gives notice of intent
30 to cancel the bond, the conservator shall execute and file in the protective

1 proceeding a new bond before the cancellation date specified by the surety.
2 The new bond shall be in the amount and subject to those conditions that
3 may be required by the court. If the conservator fails to file a new bond, the
4 authority of the conservator ends on the date specified by the surety for
5 cancellation of the bond. The letters of conservatorship issued to the
6 conservator are void from that date, and the conservator must make and file
7 the final accounting of the conservator.

8

9

“UNIT CAPTIONS

10

11 **“SECTION 21. The unit captions used in this 2013 Act are provided**
12 **only for the convenience of the reader and do not become part of the**
13 **statutory law of this state or express any legislative intent in the**
14 **enactment of this 2013 Act.**

15

16

“APPLICABILITY

17

18 **“SECTION 22. Sections 2 to 9 of this 2013 Act and the amendments**
19 **to ORS 125.240, 125.410, 125.700, 125.705, 125.710, 125.715, 125.720, 125.725,**
20 **125.730, 441.109 and 441.153 by sections 10 to 20 of this 2013 Act apply**
21 **to protective proceedings commenced on or after the effective date of**
22 **this 2013 Act.”.**

23

FISCAL IMPACT OF PROPOSED LEGISLATION

Measure: HB 2671 - A

Seventy-Seventh Oregon Legislative Assembly – 2013 Regular Session
Legislative Fiscal Office

*Only Impacts on Original or Engrossed
Versions are Considered Official*

Prepared by: Kim To
Reviewed by: Laurie Byerly, Steve Bender, Monica Brown
Date: 5/14/2013

Measure Description:

Establishes the Office of the Public Guardian and Conservator within the Office of the Long-Term Care Ombudsman to provide public guardian and conservator services for persons without relatives or friends willing or able to serve as guardians or conservators.

Government Unit(s) Affected:

Long Term Care Ombudsman, Oregon Judicial Department (OJD), Department of Justice (DOJ), Oregon State Police (OSP)

Local Government Mandate:

This bill does not affect local governments' service levels or shared revenues sufficient to trigger Section 15, Article XI of the Oregon Constitution.

Analysis:

House Bill 2671 A-Engrossed establishes Office of the Public Guardian and Conservator (OPGC), within the Long Term Care Ombudsman (LTCO). The OPGC is charged with (1) providing public guardian and conservator services for Oregonians who do not have relatives or friends willing or able to assume the duties of guardian or conservator, and who lack the financial resources to obtain private fiduciary services; (2) educating the public about public guardian and conservator services; (3) certifying deputy guardians and conservators; (4) developing model standards of conduct and practice for guardians and conservators; (5) developing and implementing a training program for deputy guardians and conservators; (6) recruiting, training and supervising volunteers; (7) establishing a process to determine eligibility of persons to receive public guardian and conservator services; (8) cooperating with county guardian and conservator offices; (9) working with existing programs to develop and expand guardian and conservatorship programs in Oregon; and (10) making recommendations to the legislature.

Long-Term Care Ombudsman (LTCO)

The fiscal impact of this bill to the Long Term Care Ombudsman is anticipated to be \$462,421 General Fund, and 2.25 FTE for the 18 months of 2013-15 biennium; and \$709,045 General Fund, and 3.00 FTE for the 2015-17 biennium. The bill provides for the appointment of a full-time Public Guardian and Conservator, and the hiring of one full-time Deputy Guardian and Conservator, and one administrative staff position.

The Legislative Fiscal Office notes that the fiscal impact on LTCO is an estimate for the start-up of the Office of the Public Guardian and Conservator. It contains essentially the Personal Services, and related Services and Supplies for the establishment of three additional staff positions within the Long Term Care Ombudsman to launch the Office of the Public Guardian and Conservator. As OPGC/LTCO develop the standards of operations and practices for providing public guardianship and conservatorship, the agency may incur other expenses not fully accounted for in the ombudsman's fiscal estimate, including:

Services & Supplies, Special Payments

Services and Supplies could fluctuate depending on actual vendor responses to more concrete requests for proposals for products and services such as: (1) contracts with professional

guardians/conservators; (2) case management software and service contracts; (3) storage rental for the secure custody of clients' possessions; and (4) research service to help the office locate and contact relatives. The bill requires OPGC to conduct a needs assessment before filing a petition for appointment of a fiduciary. One requirement of the needs assessment is locating and inquiring on whether any other person may be willing and able to serve as the potential client's guardian or conservator. The bill also requires OPGC to create and execute a plan outlining the type and duration of services to be provided by the office to each person determined to be eligible for public guardian and conservator services. Furthermore, although the bill stipulates that a court may not charge OPGC a fee for the filing of a petition or any other pleading by OPGC, and prohibits the courts from ordering OPGC to pay court costs or attorney fees in a proceeding brought on behalf of a OPGC client, the bill is silent regarding the entity responsible for covering expenses such as court visitors. OPGC may end up being held responsible for this and similar expenses.

Certification

HB 2671 requires OPGC to certify staff and volunteers as public guardians and conservators. At this time, it is unknown how many individuals OPGC will need to certify in a given biennium. In addition, it is unknown whether the new agency will use existing certifying entities or establish its own certification process. Currently, the Oregon Certified Professional Fiduciary Certification is a voluntary program. An individual must be a Nationally Certified Guardian through the Center for Guardianship Certification to become an Oregon Certified Professional Fiduciary. The application, exam and background check fees for certification is approximately \$575 per person, with a recertification fee of \$250 required every three years. In addition, OPGC will need staff and resources to track and manage the external certification of staff and volunteers. Alternatively, if OPGC decides to establish its own certification process, the agency will need staffing and resources to implement and maintain this independent certification process.

Department of Justice (DOJ)

Department of Justice estimates roughly 175 hours of attorney time to provide guidance, establish rules and procedures for the new OPGC. While the department will carry out this work with existing staff, the estimated Attorney General cost to OPGC is \$65,798 for the 2013-15 biennium. Attorney General fees are included in the Long Term Care Ombudsman's estimates. The fiscal impact of this bill on DOJ for the 2015-17 biennium is indeterminate depending on the number of clients OPGC will serve by the 2015-17 biennium.

Oregon Judicial Department (OJD)

The fiscal impact of this bill on state courts is indeterminate depending on the number and scope of petitions filed by OPGC in a given biennium. The bill stipulates that a court may not charge a fee for the filing of a petition or any other pleading by OPGC. The bill also prohibits the court from ordering OPGC to pay court costs or attorney fees in a proceeding brought on behalf of an OPGC client. The Judicial Department reports that the current average cost for a probate case, which includes guardianship and conservatorship cases, is approximately \$298 per case.

Oregon State Police (OSP)

The bill requires individuals providing authorized public guardian and conservator services, or has personal contact with a client/ward through OPGC to undergo a criminal records check, including fingerprint identification. OSP anticipates absorbing this increase in workload with existing staff and resources. Note that the 2011 Legislature approved a \$47.25 administratively established fee for criminal background checks. All criminal background fees would be collected by OPGC/LTCO and passed through to the Oregon State Police.