

House Bill 3129

Sponsored by Representatives DEMBROW, GELSER, Senator DINGFELDER; Representatives DOHERTY, GOMBERG, KENY-GUYER, Senator EDWARDS

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**.

Prohibits person from being nominated as fiduciary or serving as fiduciary for three or more protected persons who are not related to person unless person is certified as professional fiduciary by Department of Human Services.

Establishes State Board of Professional Fiduciaries for purpose of adopting rules related to certification and regulation of professional fiduciaries.

Continuously appropriates moneys for purposes related to certification and regulation of professional fiduciaries and funding activities of board.

A BILL FOR AN ACT

1
2 Relating to professional fiduciaries; creating new provisions; amending ORS 125.240; and appropri-
3 ating money.

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

5 **SECTION 1. Sections 2 and 3 of this 2013 Act are added to and made a part of ORS**
6 **chapter 125.**

7 **SECTION 2. (1) The State Board of Professional Fiduciaries is established within the**
8 **Department of Human Services, consisting of 11 members appointed by the Director of Hu-**
9 **man Services as follows:**

10 **(a) Three members shall be former judges with experience in cases involving protected**
11 **persons;**

12 **(b) Two members shall be professional fiduciaries as described in ORS 125.240 (5);**

13 **(c) Two members shall represent groups that advocate for seniors;**

14 **(d) Two members shall represent groups that advocate for persons with disabilities; and**

15 **(e) Two members shall represent nonprofit organizations that work with protected per-**
16 **sons.**

17 **(2) The board shall:**

18 **(a) Review best practices for professional fiduciaries, including requirements established**
19 **for professional fiduciaries in other states;**

20 **(b) Determine, in consideration of and in addition to the information that a petition must**
21 **include under ORS 125.240 (1), qualifications necessary to be appointed as a professional**
22 **fiduciary;**

23 **(c) Adopt by rule a process for certifying professional fiduciaries, including qualifications**
24 **for certification; and**

25 **(d) Adopt by rule a code of professional conduct for professional fiduciaries.**

26 **(3) Qualifications adopted under subsection (2)(c) of this section must include completion**
27 **of a mandatory training program.**

28 **(4) The term of office of each member of the board is four years, but a member serves**

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 at the pleasure of the director. Before the expiration of the term of a member, the director
 2 shall appoint a successor whose term begins on January 1 next following. A member is eli-
 3 gible for reappointment. If there is a vacancy for any cause, the director shall make an ap-
 4 pointment to become immediately effective for the unexpired term.

5 (5) A majority of the members of the board constitutes a quorum for the transaction of
 6 business.

7 (6) Official action by the board requires the approval of a majority of the members of the
 8 board.

9 (7) The board shall elect one of its members to serve as chairperson.

10 (8) The board shall meet at times and places specified by the call of the chairperson or
 11 of a majority of the members of the board, but no less than six times per year.

12 (9) The board may adopt rules necessary for the operation of the board.

13 (10) Members of the board are not entitled to compensation, but may be reimbursed for
 14 actual and necessary travel and other expenses incurred by them in the performance of their
 15 official duties in the manner and amounts provided for in ORS 292.495. Claims for expenses
 16 shall be paid out of funds appropriated to the department for purposes of the board.

17 **SECTION 3.** (1) A person may not be nominated as a fiduciary or serve as a fiduciary for
 18 three or more protected persons who are not related to the person unless the person is
 19 certified as a professional fiduciary under this section.

20 (2) The Department of Human Services shall:

21 (a) Certify professional fiduciaries in accordance with rules adopted by the State Board
 22 of Professional Fiduciaries under section 2 of this 2013 Act;

23 (b) Receive and investigate complaints made against professional fiduciaries; and

24 (c) Initiate its own investigation if the department has reason to believe that a profes-
 25 sional fiduciary is not in compliance with rules adopted by the board under section 2 of this
 26 2013 Act.

27 (3) The department may adopt by rule a fee for applying for certification under this sec-
 28 tion. All moneys collected under this subsection shall be deposited in the Department of
 29 Human Services Account established under ORS 409.060 and are continuously appropriated
 30 for the purpose of administrating and enforcing this section and funding the activities of the
 31 board under section 2 of this 2013 Act.

32 (4) For the purpose of conducting investigations as required by subsection (1) of this
 33 section, the Director of Human Services or an authorized representative of the director may
 34 administer oaths, take depositions and by subpoena compel the attendance of witnesses and
 35 production of documents or other written information. If any person fails to comply with a
 36 subpoena issued under this section or refuses to testify on matters on which the person
 37 lawfully may be interrogated, the director or authorized representative may follow the pro-
 38 cedure set out in ORS 183.440 to compel obedience.

39 (5) The department may revoke the certification of a professional fiduciary that the de-
 40 partment finds is not in compliance with the provisions of this chapter or rules adopted by
 41 the board under section 2 of this 2013 Act.

42 **SECTION 4.** ORS 125.240 is amended to read:

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

1 **(a) Proof of certification as required by section 3 of this 2013 Act.**

2 [(a)] **(b)** A description of the events that led to the involvement of the professional fiduciary in
3 the case.

4 [(b)] **(c)** The professional fiduciary’s educational background and professional experience.

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

7 [(d)] **(e)** The names of providers of direct services to protected persons that are repeatedly used
8 by the professional fiduciary under contract.

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

11 [(f)] **(g)** The number of protected persons for whom the person performs fiduciary services at the
12 time of the petition.

13 [(g)] **(h)** Whether the professional fiduciary has ever had a claim against the bond of the
14 fiduciary and a description of the circumstances causing the claim.

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

17 [(i)] **(j)(A)** Whether the professional fiduciary or any staff with responsibility for making deci-
18 sions for clients or for management of client assets has ever been denied a professional license that
19 is directly related to responsibilities of the professional fiduciary, or has ever held a professional
20 license that is directly related to responsibilities of the professional fiduciary that was revoked or
21 canceled. If such a license has been denied, revoked or canceled, the petition must reflect the date
22 of the denial, revocation or cancellation and the name of the regulatory body that denied, revoked
23 or canceled the license.

24 **(B) A professional license under this paragraph does not include a professional certif-**
25 **ication under section 3 of this 2013 Act.**

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

28 [(k)] **(L)** Whether the professional fiduciary and any staff responsible for making decisions for
29 clients or for management of client assets is or has been certified by a national [*or state*] association
30 of professional fiduciaries, the name of any such association and whether the professional fiduciary
31 or other staff person has ever been disciplined by any such association and the result of the disci-
32 plinary action.

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

37 (2)(a) If a petition seeks the appointment of a professional fiduciary as described in subsection
38 (5) of this section, the professional fiduciary and all staff with responsibility for making decisions for
39 clients or for management of client assets must undergo a criminal records check before the court
40 may appoint the professional fiduciary. The results of the criminal records check shall be provided
41 by the petitioner to the court. Results of criminal records checks submitted to the court are confi-
42 dential, shall be subject to inspection only by the parties to the proceedings and their attorneys, and
43 shall not be subject to inspection by members of the public except pursuant to a court order entered
44 after a showing of good cause. A professional fiduciary must disclose to the court any criminal
45 conviction of the professional fiduciary that occurs after the criminal records check was performed.

1 The criminal records check under this subsection shall consist of a check for a criminal record in
 2 the State of Oregon and a national criminal records check if:

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

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

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

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

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

16 (b) If a public guardian and conservator operating under the provisions of ORS 125.700 to
 17 125.730 is appointed to act as a fiduciary, or a conservator operating under the authority of ORS
 18 406.050 (8) is appointed, the public guardian or conservator must file with the court within three
 19 days after receipt of written notice of the appointment a statement containing the name, address and
 20 telephone number of the individual who will act as primary decision maker for the protected person
 21 and the name of the person with whom the protected person will have personal contact if the person
 22 named as primary decision maker will not have personal contact with the protected person.

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

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

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