

**PROPOSED AMENDMENTS TO
HOUSE BILL 3129**

1 On page 1 of the printed bill, line 2, delete “amending ORS 125.240; and
2 appropri-” and insert “and amending ORS 125.240.”.

3 Delete line 2.

4 Delete lines 5 through 28 and delete pages 2 through 4 and insert:

5 **“SECTION 1. ORS 125.240 is amended to read:**

6 “125.240. (1) If a petition seeks the appointment of a professional fiduciary
7 *[as described in subsection (5) of this section]*, the petition must contain the
8 following information in addition to that information required under ORS
9 125.055:

10 **“(a) Proof that the professional fiduciary is certified by the Center
11 for Guardianship Certification or its successor organization as a Na-
12 tional Certified Guardian or a National Master Guardian.**

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

15 “[*(b)*] **(c)** The professional fiduciary’s educational background and profes-
16 sional experience.

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

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

22 “[*(e)*] **(f)** The disclosures required under ORS 125.221 if the person nomi-

1 nated to act as a **professional** fiduciary will employ a person in which the
2 nominated person has a pecuniary or financial interest.

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

5 “[*g*] (h) Whether the professional fiduciary has ever had a claim against
6 the bond of the **professional** fiduciary and a description of the circum-
7 stances causing the claim.

8 “[*h*] (i) Whether the professional fiduciary or any staff with responsi-
9 bility for making decisions for clients or for management of client assets has
10 ever filed for bankruptcy and the date of filing.

11 “[*i*] (j)(A) Whether the professional fiduciary or any staff with respon-
12 sibility for making decisions for clients or for management of client assets
13 has ever been denied a professional license that is directly related to re-
14 sponsibilities of the professional fiduciary, or has ever held a professional
15 license that is directly related to responsibilities of the professional fiduciary
16 that was revoked or canceled. If such a license has been denied, revoked or
17 canceled, the petition must reflect the date of the denial, revocation or can-
18 cellation and the name of the regulatory body that denied, revoked or can-
19 celed the license.

20 “(B) A professional license under this paragraph includes a certifi-
21 cate described in paragraph (a) of this subsection.

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

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

1 “[L] (m) The name, address and telephone number of the individual who
2 is to act as primary decision maker for the protected person and the name
3 of the person with whom the protected person will have personal contact if
4 that person is not the person who will act as primary decision maker for the
5 protected person.

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

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

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

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

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

30 “(3)(a) If a petition seeks the appointment of a public guardian and

1 conservator operating under the provisions of ORS 125.700 to 125.730, or the
2 appointment of a conservator under ORS 406.050 (8), the petition need not
3 contain the information described in subsection [(1)(d) or (L)] **(1)(e) or (m)**
4 of this section.

5 “(b) If a public guardian and conservator operating under the provisions
6 of ORS 125.700 to 125.730 is appointed to act as a **professional** fiduciary, or
7 a conservator operating under the authority of ORS 406.050 (8) is appointed,
8 the public guardian or conservator must file with the court within three days
9 after receipt of written notice of the appointment a statement containing the
10 name, address and telephone number of the individual who will act as pri-
11 mary decision maker for the protected person and the name of the person
12 with whom the protected person will have personal contact if the person
13 named as primary decision maker will not have personal contact with the
14 protected person.

15 “(4) If the court appoints a professional fiduciary as described in sub-
16 section (5) of this section, the professional fiduciary must update all infor-
17 mation required to be disclosed by subsection (1) of this section and provide
18 a copy of the updated statement upon the request of the protected person or
19 upon the request of any person entitled to notice under ORS 125.060 (3). The
20 professional fiduciary must provide an updated statement without demand to
21 the court, the protected person and persons entitled to notice under ORS
22 125.060 (3) at any time that there is a change in the information provided
23 under subsection [(1)(L)] **(1)(m)** or (3)(b) of this section.

24 “(5) [*The provisions of this section apply to any*] **As used in this section,**
25 **‘professional fiduciary’ means a** person nominated as a fiduciary or serv-
26 ing as a fiduciary who is acting at the same time as a fiduciary for three
27 or more protected persons who are not related to the fiduciary.

28 **“SECTION 2. (1) As used in this section:**

29 **“(a) ‘Professional fiduciary’ has the meaning given that term in**
30 **ORS 125.240.**

1 **“(b) ‘Protected person’ has the meaning given that term in ORS**
2 **125.005.**

3 **“(2) The Fiduciary Education Work Group is established, consisting**
4 **of 11 members appointed as follows:**

5 **“(a) The Chief Justice of the Supreme Court shall appoint three**
6 **members who are former or current judges who have experience in**
7 **cases involving protected persons or officers or employees of the State**
8 **Court Administrator who have experience in cases involving protected**
9 **persons; and**

10 **“(b) The Governor shall appoint eight members as follows:**

11 **“(A) Three members shall be professional fiduciaries;**

12 **“(B) Three members shall represent groups that advocate for per-**
13 **sons with disabilities;**

14 **“(C) One member shall be a representative from the Department**
15 **of Human Services; and**

16 **“(D) One member shall be an attorney who is a member of the**
17 **Oregon State Bar.**

18 **“(3) The work group shall:**

19 **“(a) Review best practices for training and providing ongoing edu-**
20 **cation for professional fiduciaries, including:**

21 **“(A) Training and continuing education programs and requirements**
22 **provided by the Center for Guardianship Certification or its successor**
23 **organization for National Certified Guardians and National Master**
24 **Guardians;**

25 **“(B) Training and continuing education programs and requirements**
26 **required by other states; and**

27 **“(C) Training and continuing education programs currently avail-**
28 **able in Oregon through colleges and other organizations;**

29 **“(b) Develop recommendations related to training and providing**
30 **continuing education for professional fiduciaries;**

1 “(c) Develop recommendations related to mechanisms that will
2 provide, organize and track the training and continuing education of
3 professional fiduciaries;

4 “(d) Develop recommendations on whether this state should require
5 certification of professional fiduciaries in addition to, or instead of,
6 certification as a National Certified Guardian or a National Master
7 Guardian; and

8 “(e) Develop recommendations on whether the operations of the
9 work group should be extended beyond the date specified in section 3
10 of this 2013 Act.

11 “(4) A majority of the voting members of the work group consti-
12 tutes a quorum for the transaction of business.

13 “(5) Official action by the work group requires the approval of a
14 majority of the voting members of the work group.

15 “(6) The work group shall elect one of its members to serve as
16 chairperson.

17 “(7) If there is a vacancy for any cause, the appointing authority
18 shall make an appointment to become immediately effective.

19 “(8) The work group shall meet at times and places specified by the
20 call of the chairperson or of a majority of the voting members of the
21 work group, but no less than once per month until the date specified
22 in subsection (10) of this section.

23 “(9) The work group may adopt rules necessary for the operation
24 of the work group.

25 “(10) The work group shall report its recommendations developed
26 under subsection (3) of this section to the interim committees of the
27 Legislative Assembly related to judiciary no later than August 1, 2014.

28 “(11) The Judicial Department shall provide staff support to the
29 work group.

30 “(12) Members of the work group are not entitled to compensation,

1 but may be reimbursed for actual and necessary travel and other ex-
2 penses incurred by them in the performance of their official duties in
3 the manner and amounts provided for in ORS 292.495. Claims for ex-
4 penses shall be paid out of funds appropriated to the Judicial Depart-
5 ment for purposes of the work group.

6 “(13) All agencies of state government, as defined in ORS 174.111,
7 are directed to assist the work group in the performance of its duties
8 and, to the extent permitted by laws relating to confidentiality, to
9 furnish such information and advice as the members of the work
10 group consider necessary to perform their duties.

11 “SECTION 3. Section 2 of this 2013 Act is repealed on January 2,
12 2016.”

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