

HOUSE AMENDMENTS TO HOUSE BILL 2601

By COMMITTEE ON JUDICIARY

April 15

1 On page 1 of the printed bill, line 2, after “ORS” insert “125.080, 125.225,” and after “125.315”
2 insert “and 125.325”.

3 Delete lines 4 through 27 and delete pages 2 and 3 and insert:

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

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

6 **“(a) ‘Association’ means communication, visitation or other social interaction with third**
7 **parties; and**

8 **“(b) ‘Interested person’ means a protected person, a person with whom association is**
9 **being limited, any fiduciary for the protected person or any person who has filed a request**
10 **for notice in the proceedings.**

11 **“(2) A guardian may not limit a protected person’s preferred associations, except:**

12 **“(a) As specifically allowed by the court; or**

13 **“(b) To the extent the guardian determines necessary to avoid unreasonable harm to the**
14 **protected person’s health, safety or well-being.**

15 **“(3) If a protected person is unable to communicate, the protected person’s preferred**
16 **association shall be presumed based on the prior relationship between the protected person**
17 **and the person with whom the association is contemplated.**

18 **“(4)(a) If a guardian limits a protected person’s association as provided in subsection**
19 **(2)(b) of this section, an interested person may move the court to modify the guardian’s**
20 **powers with respect to limiting the association.**

21 **“(b) Motions under this subsection must be in writing, except that a protected person**
22 **may move the court orally in person or by other means that are intended to convey the**
23 **protected person’s motion to the court. The court shall designate the manner in which an**
24 **oral motion may be made that ensures that a protected person will have the protected**
25 **person’s motion presented to the court. The clerk of the court shall provide a means of re-**
26 **ducing the oral motion to a signed writing for the purpose of filing the motion.**

27 **“(c) Any limits on a protected person’s associations in effect on the date a motion is filed**
28 **under this subsection remain in effect pending the court’s action under paragraph (e) of this**
29 **subsection.**

30 **“(d) The court shall schedule the hearing required under ORS 125.080 (3) on a motion**
31 **under this subsection no later than 60 days following the date the motion is filed with the**
32 **court. The person making the motion shall give notice to all persons entitled to notice under**
33 **ORS 125.060 (3) of the date, time and place of the scheduled hearing at least 15 days before**
34 **the date set for the hearing. Notice shall be given in the manner prescribed by ORS 125.065.**
35 **The court for good cause shown may provide for a different method or time of giving notice**

1 **under this subsection.**

2 **“(e) If the court determines that the guardian unreasonably limited association under**
3 **this section, the court may:**

4 **“(A) Permit the association, with or without limitations;**

5 **“(B) Modify the guardian’s powers to limit the protected person’s associations;**

6 **“(C) Remove the guardian; or**

7 **“(D) Award reasonable attorney fees and court costs associated with the motion.**

8 **“SECTION 3.** ORS 125.080 is amended to read:

9 **“125.080. (1) The court may require that a hearing be held on any petition or motion in a pro-**
10 **tection proceeding.**

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

13 **“(3) A hearing must be held on a motion to modify a guardian’s powers under section 2**
14 **of this 2019 Act.**

15 **“[(3)] (4) The respondent or protected person may appear at a hearing in person or by counsel.**

16 **“[(4)] (5) If the court requires that a hearing be held on a petition, or a hearing is otherwise**
17 **required under this section, the court may appoint counsel for the respondent unless the respondent**
18 **is already represented by counsel.**

19 **“SECTION 4.** ORS 125.225 is amended to read:

20 **“125.225. (1) A court shall remove a fiduciary whenever that removal is in the best interests of**
21 **the protected person.**

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

26 **“(3) In addition to any other grounds, the court may remove a guardian if the court deter-**
27 **mines the guardian:**

28 **“(a) Unreasonably limits the protected person’s associations under section 2 of this 2019**
29 **Act;**

30 **“(b) Fails to perform the guardian’s duties required under ORS 125.315 (1)(g) to (i); or**

31 **“(c) [The guardian] Changes the abode of the adult protected person or places the protected**
32 **person in a mental health treatment facility, a nursing home or other residential facility and:**

33 **“[(a)] (A) Failed to disclose in the petition for appointment that the guardian intended to make**
34 **the placement; or**

35 **“[(b)] (B) Failed to comply with ORS 125.320 (3) before making the placement.**

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

40 **“(5) Upon termination of the authority of a fiduciary, the court may appoint a successor**
41 **fiduciary. A petition for appointment as successor fiduciary must be filed in the same manner as**
42 **provided for an original petition, and is subject to all provisions applicable to an original petition**
43 **for the appointment of a fiduciary. No filing fee shall be charged or collected for the filing of a pe-**
44 **tion for the appointment of a successor fiduciary.**

45 **“SECTION 5.** ORS 125.315 is amended to read:

1 “125.315. (1) A guardian has the following powers and duties:
2 “(a) Except to the extent of any limitation under the order of appointment, the guardian has
3 custody of the protected person and may establish the protected person’s place of abode within or
4 without this state.
5 “(b) The guardian shall provide for the care, comfort and maintenance of the protected person
6 and, whenever appropriate, shall arrange for training and education of the protected person.
7 Without regard to custodial rights of the protected person, the guardian shall take reasonable care
8 of the person’s clothing, furniture and other personal effects unless a conservator has been ap-
9 pointed for the protected person.
10 “(c) Subject to the provisions of ORS 127.505 to 127.660 and subsection (3) of this section, the
11 guardian may consent, refuse consent or withhold or withdraw consent to health care, as defined in
12 ORS 127.505, for the protected person. A guardian is not liable solely by reason of consent under
13 this paragraph for any injury to the protected person resulting from the negligence or acts of third
14 persons.
15 “(d) The guardian may:
16 “(A) Make advance funeral and burial arrangements;
17 “(B) Subject to the provisions of ORS 97.130, control the disposition of the remains of the pro-
18 tected person; and
19 “(C) Subject to the provisions of ORS 97.965, make an anatomical gift of all or any part of the
20 body of the protected person.
21 “(e) The guardian of a minor has the powers and responsibilities of a parent who has legal
22 custody of a child, except that the guardian has no obligation to support the minor beyond the
23 support that can be provided from the estate of the minor, and the guardian is not liable for the
24 torts of the minor. The guardian may consent to the marriage or adoption of a protected person
25 who is a minor.
26 “(f) Subject to the provisions of ORS 125.320 (2), the guardian may receive money and personal
27 property deliverable to the protected person and apply the money and property for support, care and
28 education of the protected person. The guardian shall exercise care to conserve any excess for the
29 protected person’s needs.
30 **“(g) The guardian shall promote the self-determination of the protected person and, to
31 the extent practicable, encourage the protected person to participate in decisions, act on the
32 protected person’s own behalf and develop or regain the capacity to manage the protected
33 person’s personal affairs. To accomplish the duties under this paragraph, the guardian shall:**
34 **“(A) Become or remain personally acquainted with the protected person and maintain
35 sufficient contact with the protected person, including through regular visitation, to know
36 the protected person’s abilities, limitations, needs, opportunities and physical and mental
37 health;**
38 **“(B) To the extent practicable, identify the values and preferences of the protected per-
39 son and involve the protected person in decisions affecting the protected person, including
40 decisions about the protected person’s care, dwelling, activities or social interactions; and**
41 **“(C) Make reasonable efforts to identify and facilitate supportive relationships and ser-
42 vices for the protected person.**
43 **“(h) In making decisions for the protected person, the guardian shall make the decisions
44 the guardian reasonably believes the protected person would make if the protected person
45 were able, unless doing so would unreasonably harm or endanger the welfare or personal or**

1 financial interests of the protected person. To determine the decision the protected person
2 would make if able, the guardian shall consider the protected person's previous or current
3 instructions, preferences, opinions, values and actions, to the extent actually known or rea-
4 sonably ascertainable by the guardian.

5 "(i) If the guardian cannot make a decision under paragraph (h) of this subsection be-
6 cause the guardian does not know and cannot reasonably determine the decision the pro-
7 tected person would make if able, or the guardian reasonably believes the decision the
8 protected person would make would unreasonably harm or endanger the welfare or personal
9 or financial interests of the protected person, the guardian shall act in accordance with the
10 best interest of the protected person. In determining the best interest of the protected per-
11 son, the guardian shall consider:

12 "(A) Information received from professionals and persons that demonstrate sufficient
13 interest in the welfare of the protected person;

14 "(B) Other information the guardian believes the protected person would consider if the
15 protected person were able; and

16 "(C) Other factors a reasonable person in the circumstances of the protected person
17 would consider, including consequences for others.

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

21 "(3) A guardian may consent to the withholding or withdrawing of artificially administered nu-
22 trition and hydration for a protected person only under the circumstances described in ORS 127.580
23 (1)(a), (b), (d), (e) or (f) and, if the protected person has a medical condition specified in ORS 127.580
24 (1)(b), (d), (e) or (f), the condition has been medically confirmed.

25 "**SECTION 6.** ORS 125.325 is amended to read:

26 "125.325. Within 30 days after each anniversary of appointment, a guardian for an adult pro-
27 tected person shall file with the court a written report. The report must include a declaration under
28 penalty of perjury in the form required by ORCP 1 E, or an unsworn declaration under ORS 194.800
29 to 194.835, if the declarant is physically outside the boundaries of the United States. Copies of the
30 guardian's report must be given to those persons specified in ORS 125.060 (3). The report shall be
31 in substantially the following form:

32 " _____

33
34 IN THE _____ COURT _____ COUNTY,
35 STATE OF OREGON
36 DEPARTMENT OF PROBATE

37 In the Matter of the) No. _____
38 Guardianship of)
39 _____,)
40 (Name of protected)
41 person))
42 A Protected)
43 Person.)

44 GUARDIAN'S REPORT

45 I am the guardian for the person named above, and I make the following report to the court as

1 required by law:

2 1. My name is _____.

3 2. My address and telephone number are:

4 _____

5 _____

6 Phone _____

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

8 _____

9 _____

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

11 _____

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

14 _____

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

16 _____

17 _____

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

20 _____

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

23 _____

24 _____

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

26 _____

27 _____

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

29 _____

30 _____

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

32 _____

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

34 _____

35 **13. I limited the person's association with _____ (Please specifically name any limita-**
36 **tions and briefly describe the limitation):**

37 _____

38 [13.] 14. I made the following major decisions on behalf of the person during the past year (brief
39 description):

40 _____

41 [14.] 15. I believe the guardianship should or should not continue because:

42 _____

43 [15.] 16. At the time of my last report, I held the following amount of money on behalf of the
44 person: \$_____. Since my last report, I received the following amount of money on behalf of the
45 person: \$_____. I spent the following amount of money on behalf of the person: \$_____. I

1 now hold the following amount of money on behalf of the person: \$_____.

2 [16.] 17. A true copy of this report will be given to the person, any conservator for the person
3 and any other person who has requested notice.

4 [17.] 18. Since my last report:

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

6 _____

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

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

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

12 [18.] 19. Since my last report, I have delegated the following powers over the protected person
13 for the following periods of time (provide name of person powers delegated to):

14 _____

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

17 Dated this ____ day of _____, 2____.

18 _____

19 _____ Guardian

20 NOTICE: ANY PERSON INTERESTED IN THE AFFAIRS OR WELFARE OF THE PRO-
21 TECTED PERSON WHO IS THE SUBJECT OF THIS REPORT WHO HAS CONCERNS ABOUT
22 THIS REPORT OR THE GUARDIAN'S PERFORMANCE MAY CONTACT THE COURT AS FOL-
23 LLOWS:

24 _____

25 _____

26 _____

27 _____

28 _____

29 _____

30 _____

31 _____

32 _____

33 _____

34 " _____ " .

35 _____

36 _____