

House Bill 2601

Sponsored by Representative NATHANSON, Senators PROZANSKI, WAGNER, Representative PILUSO; Representatives DOHERTY, GOMBERG, GORSEK, HOLVEY, LIVELY, NOSSE, POWER, SALINAS, SCHOUTEN, WILDE, WITT, Senators DEMBROW, FREDERICK, GELSER, MANNING JR, MONNES ANDERSON, STEINER HAYWARD, TAYLOR (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**.

Limits guardian's authority to limit protected person's preferred associations with third parties. Permits interested person to move court to review guardian's power to limit protected person's associations.

Requires guardian to utilize substituted judgment standard for making decisions on behalf of protected person. Permits guardian to utilize best interest standard if guardian is unable to determine protected person's preferences.

A BILL FOR AN ACT

Relating to guardianships; creating new provisions; and amending ORS 125.315.

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

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

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

(a) "Association" means communication, visitation or other social interaction with third parties; and

(b) "Interested person" means a protected person, a person with whom association is being limited, any fiduciary for the protected person or any person who has filed a request for notice in the proceedings.

(2) A guardian may not limit a protected person's preferred associations, except:

(a) As specifically allowed by the court; or

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

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

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

(b) The court shall schedule a hearing on any motion under this subsection no later than 60 days following the date the motion is filed with the court.

(c) If the court determines that the guardian unreasonably limited association under this section, the court may:

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

(B) Modify the guardian's powers to limit the protected person's associations;

(C) Remove the guardian; or

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 **(D) Require the guardian to bear any court costs and attorney fees associated with the**
 2 **motion.**

3 **SECTION 3.** ORS 125.315 is amended to read:

4 125.315. (1) A guardian has the following powers and duties:

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

8 (b) The guardian shall provide for the care, comfort and maintenance of the protected person
 9 and, whenever appropriate, shall arrange for training and education of the protected person.
 10 Without regard to custodial rights of the protected person, the guardian shall take reasonable care
 11 of the person's clothing, furniture and other personal effects unless a conservator has been ap-
 12 pointed for the protected person.

13 (c) Subject to the provisions of ORS 127.505 to 127.660 and subsection (3) of this section, the
 14 guardian may consent, refuse consent or withhold or withdraw consent to health care, as defined in
 15 ORS 127.505, for the protected person. A guardian is not liable solely by reason of consent under
 16 this paragraph for any injury to the protected person resulting from the negligence or acts of third
 17 persons.

18 (d) The guardian may:

19 (A) Make advance funeral and burial arrangements;

20 (B) Subject to the provisions of ORS 97.130, control the disposition of the remains of the pro-
 21 tected person; and

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

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

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

32 **(g) The guardian shall promote the self-determination of the protected person and, to the**
 33 **extent practicable, encourage the protected person to participate in decisions, act on the**
 34 **protected person's own behalf and develop or regain the capacity to manage the protected**
 35 **person's personal affairs. To accomplish the duties under this paragraph, guardian shall:**

36 **(A) Become or remain personally acquainted with the protected person and maintain**
 37 **sufficient contact with the protected person, including through regular visitation, to know**
 38 **the protected person's abilities, limitations, needs, opportunities and physical and mental**
 39 **health;**

40 **(B) To the extent practicable, identify the values and preferences of the protected person**
 41 **and involve the protected person in decisions affecting the protected person, including deci-**
 42 **sions about the protected person's care, dwelling, activities or social interactions; and**

43 **(C) Make reasonable efforts to identify and facilitate supportive relationships and ser-**
 44 **vices for the protected person.**

45 **(h) In making decisions for the protected person, the guardian shall make the decisions**

1 the guardian reasonably believes the protected person would make if the protected person
2 were able, unless doing so would unreasonably harm or endanger the welfare or personal or
3 financial interests of the protected person. To determine the decision the protected person
4 would make if able, the guardian shall consider the protected person's previous or current
5 instructions, preferences, opinions, values and actions, to the extent actually known or rea-
6 sonably ascertainable by the guardian.

7 (i) If the guardian cannot make a decision under paragraph (h) of this subsection because
8 the guardian does not know and cannot reasonably determine the decision the protected
9 person would make if able, or the guardian reasonably believes the decision the protected
10 person would make would unreasonably harm or endanger the welfare or personal or finan-
11 cial interests of the protected person, the guardian shall act in accordance with the best in-
12 terest of the protected person. In determining the best interest of the protected person, the
13 guardian shall consider:

14 (A) Information received from professionals and persons that demonstrate sufficient in-
15 terest in the welfare of the protected person;

16 (B) Other information the guardian believes the protected person would consider if the
17 protected person were able; and

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

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

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

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