

House Bill 2329

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Judiciary for Oregon State Bar)

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**.

Modifies execution formalities for appointment of person to make decisions concerning disposition of remains and for declaration for mental health treatment.

A BILL FOR AN ACT

1
2 Relating to execution formalities; creating new provisions; amending ORS 97.130, 127.700, 127.707
3 and 127.736; and repealing ORS 127.730.

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

5 **SECTION 1.** ORS 97.130 is amended to read:

6 97.130. (1) Any individual of sound mind who is 18 years of age or older, by completion of a
7 written signed instrument or by preparing or prearranging with any funeral service practitioner li-
8 censed under ORS chapter 692, may direct any lawful manner of disposition of the individual's re-
9 mains. Except as provided under subsection (7) of this section, disposition directions or disposition
10 prearrangements that are prepaid or that are filed with a funeral service practitioner licensed under
11 ORS chapter 692 are not subject to cancellation or substantial revision.

12 (2) A person within the first applicable listed class among the following listed classes that is
13 available at the time of death, in the absence of actual notice of a contrary direction by the
14 decedent as described under subsection (1) of this section or actual notice of opposition by com-
15 pletion of a written instrument by a member of the same class or a member of a prior class, may
16 direct any lawful manner of disposition of a decedent's remains by completion of a written instru-
17 ment:

18 (a) The spouse of the decedent.

19 (b) A son or daughter of the decedent 18 years of age or older.

20 (c) Either parent of the decedent.

21 (d) A brother or sister of the decedent 18 years of age or older.

22 (e) A guardian of the decedent at the time of death.

23 (f) A person in the next degree of kindred to the decedent.

24 (g) The personal representative of the estate of the decedent.

25 (h) The person nominated as the personal representative of the decedent in the decedent's last
26 will.

27 (i) A public health officer.

28 (3)(a) The decedent or any person authorized in subsection (2) of this section to direct the
29 manner of disposition of the decedent's remains may delegate such authority to any person 18 years
30 of age or older.

31 (b) Delegation of the authority to direct the manner of disposition of remains must be made by

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 completion of:

2 (A) The written instrument described in subsection (8) of this section; or

3 (B) The form described in subsection (4) of this section.

4 (c) The person to whom the authority is delegated has the same authority under subsection (2)
5 of this section as the person delegating the authority.

6 (4)(a) A Record of Emergency Data, DD Form 93, or a successor form recognized by the Armed
7 Forces of the United States, as that term is defined in ORS 366.931, completed by a member of the
8 Armed Forces of the United States serves as a valid written instrument for purposes of subsection
9 (3) of this section.

10 (b) In accordance with United States Department of Defense Instruction 1300.18, a member of
11 the Armed Forces of the United States shall complete the form described in this subsection and shall
12 verify the accuracy of the form at least annually.

13 (c) The form described in this subsection, regardless of the date on which the form was signed,
14 supersedes any other written instrument that directs the disposition of the decedent's remains.

15 (5) Except as provided in subsection (4)(c) of this section, if a decedent or the decedent's
16 designee issues more than one authorization or direction for the disposal of the decedent's remains,
17 only the most recent authorization or direction is binding.

18 (6) A donation of anatomical gifts under ORS 97.951 to 97.982 takes priority over directions for
19 the disposition of a decedent's remains under this section only if the person making the donation is
20 of a priority under subsection (1) or (2) of this section the same as or higher than the priority of the
21 person directing the disposition of the remains.

22 (7) If the decedent directs a disposition under subsection (1) of this section and those financially
23 responsible for the disposition are without sufficient funds to pay for such disposition or the estate
24 of the decedent has insufficient funds to pay for the disposition, or if the direction is unlawful, the
25 direction is void and disposition shall be in accordance with the direction provided by the person
26 given priority in subsection (2) of this section and who agrees to be financially responsible.

27 (8) The signature of the individual delegating the authority to direct the manner of disposition
28 is required for the completion of the written instrument required in subsection (3)(b)(A) of this sec-
29 tion. The following form or a form substantially similar shall be used by all individuals:

30 _____
31
32 APPOINTMENT OF PERSON
33 TO MAKE DECISIONS
34 CONCERNING DISPOSITION
35 OF REMAINS
36

37 I, _____, appoint _____, whose address is
38 _____ and whose telephone number is (____) _____, as the person
39 to make all decisions regarding the disposition of my remains upon my death for my burial,
40 cremation or alternative disposition. In the event _____ is unable to act, I appoint
41 _____, whose address is _____ and whose telephone
42 number is (____) _____, as my alternate person to make all decisions regarding the dis-
43 position of my remains upon my death for my burial, cremation or alternative disposition.

44 It is my intent that this Appointment of Person to Make Decisions Concerning Disposition of
45 Remains act as and be accepted as the written authorization presently required by ORS 97.130 (or

1 its corresponding future provisions) or any other provision of Oregon Law, authorizing me to name
2 a person to have authority to dispose of my remains.

3
4 DATED this ____ day of _____, _____.

5 _____
6 (Signature)
7

8 **NOTARY OR WITNESSES**

9
10 **(Have this document notarized by a notary public OR have 2 competent adult witnesses**
11 **complete the Declaration of Witnesses.)**

12
13 **NOTARIAL CERTIFICATE:**

14
15 **State of _____**
16 **County of _____**
17 **Signed or attested before me on _____,**
18 **2____, by _____.**
19 _____
20 **Notary Public - State of Oregon**

21
22 **OR**

23
24 **DECLARATION OF WITNESSES**

25
26 We declare that _____ is personally known to us, that he/she signed this Ap-
27 pointment of Person to Make Decisions Concerning Disposition of Remains in our presence, that
28 he/she appeared to be of sound mind and not acting under duress, fraud or undue influence, and that
29 neither of us is the person so appointed by this document.

30
31
32 Witnessed By:
33 _____ Date: _____

34 Witnessed By:
35 _____ Date: _____
36 _____

37
38 (9) Subject to the provisions of ORS 97.951 to 97.982, if disposition of the remains of a decedent
39 has not been directed and authorized under this section within 10 days after the date of the death
40 of the decedent, a public health officer may direct and authorize disposition of the remains.

41 (10) Notwithstanding subsection (2) of this section, a person arrested for or charged with crim-
42 inal homicide by reason of the death of the decedent may not direct the disposition of the decedent's
43 remains. The disposition of the decedent's remains shall be made in accordance with the directions
44 of an eligible person within the first applicable class established under subsection (2) of this section.

45 (11) Notwithstanding subsections (2) and (3) of this section, if the person who has the authority

1 to direct the manner of disposition of cremated or reduced remains pursuant to subsection (1) or (2)
 2 of this section transfers any portion of the cremated or reduced remains to another person, the re-
 3 cipient of the cremated or reduced remains has the authority to direct the manner of disposition of
 4 the cremated or reduced remains in the recipient's possession.

5 **SECTION 2.** ORS 127.700 is amended to read:

6 127.700. As used in ORS 127.700 to 127.737:

7 (1) "Attending physician" shall have the same meaning as provided in ORS 127.505.

8 (2) "Attorney-in-fact" means an adult validly appointed under ORS 127.540, 127.700 to 127.737
 9 and 426.385 to make mental health treatment decisions for a principal under a declaration for mental
 10 health treatment and also means an alternative attorney-in-fact.

11 (3) "Declaration" means a document making a declaration of preferences or instructions re-
 12 garding mental health treatment.

13 (4) "Health care facility" shall have the same meaning as provided in ORS 127.505.

14 (5) **"Health care provider" shall have the same meaning as provided in ORS 127.505.**

15 [(5)] (6) "Incapable" means that, in the opinion of the court in a protective proceeding under
 16 ORS chapter 125, or the opinion of two physicians, a person's ability to receive and evaluate infor-
 17 mation effectively or communicate decisions is impaired to such an extent that the person currently
 18 lacks the capacity to make mental health treatment decisions.

19 [(6)] (7) "Mental health treatment" means convulsive treatment, treatment of mental illness with
 20 psychoactive medication, admission to and retention in a health care facility for a period not to
 21 exceed 17 days for care or treatment of mental illness, and outpatient services.

22 [(7)] (8) "Outpatient services" means treatment for a mental or emotional disorder that is ob-
 23 tained by appointment and is provided by an outpatient service as defined in ORS 430.010.

24 [(8)] (9) "Provider" means a mental health treatment provider, a physician assistant licensed
 25 under ORS 677.505 to 677.525 or a nurse practitioner licensed under ORS 678.375 to 678.390.

26 [(9)] (10) "Representative" means "attorney-in-fact" as defined in this section.

27 **SECTION 3.** ORS 127.707 is amended to read:

28 127.707. *[A declaration is effective only if it is signed by the principal and two competent adult*
 29 *witnesses. The witnesses must attest that the principal is known to them, signed the declaration in their*
 30 *presence and appears to be of sound mind and not under duress, fraud or undue influence. Persons*
 31 *specified in ORS 127.730 may not act as witnesses.]*

32 (1) **A declaration is effective only if it is signed by the principal and:**

33 (a) **Signed by two competent adult witnesses; or**

34 (b) **Notarized by a notary public.**

35 (2) **If a declaration is validated under subsection (1)(a) of this section, each witness must:**

36 (a) **Witness the principal signing the declaration or acknowledging the signature of the**
 37 **principal on the declaration.**

38 (b) **Attest that the principal:**

39 (A) **Is known to the witness;**

40 (B) **Signed or acknowledged the declaration in the presence of the witness; and**

41 (C) **Appeared to be of sound mind and not under duress, fraud or undue influence.**

42 (3) **None of the following may serve as a witness to the signing or acknowledgment of a**
 43 **declaration:**

44 (a) **The principal's attending physician, provider or health care provider or a relative of**
 45 **the principal's attending physician, provider or health care provider;**

1 (b) An owner, operator or relative of an owner or operator of a health care facility in
2 which the principal is a patient or resident;

3 (c) A person related to the principal by blood, marriage or adoption; or

4 (d) A person appointed as attorney-in-fact or alternative attorney-in-fact by the declara-
5 tion.

6 SECTION 4. ORS 127.736 is amended to read:

7 127.736. A declaration for mental health treatment shall be in substantially the following form:
8

9
10 DECLARATION FOR MENTAL HEALTH TREATMENT

11 I, _____, being an adult of sound mind, willfully and voluntarily
12 make this declaration for mental health treatment. I want this declaration to be followed if a court
13 or two physicians determine that I am unable to make decisions for myself because my ability to
14 receive and evaluate information effectively or communicate decisions is impaired to such an extent
15 that I lack the capacity to refuse or consent to mental health treatment. "Mental health
16 treatment" means treatment of mental illness with psychoactive medication, admission to and re-
17 tention in a health care facility for a period up to 17 days, convulsive treatment and outpatient
18 services that are specified in this declaration.
19

20
21 CHOICE OF DECISION MAKER

22 If I become incapable of giving or withholding informed consent for mental health treatment, I
23 want these decisions to be made by: (INITIAL ONLY ONE)

24 — My appointed representative consistent with my desires, or, if my desires are unknown by
25 my representative, in what my representative believes to be my best interests.

26 — By the mental health treatment provider who requires my consent in order to treat me, but
27 only as specifically authorized in this declaration.

28 APPOINTED REPRESENTATIVE

29 If I have chosen to appoint a representative to make mental health treatment decisions for me
30 when I am incapable, I am naming that person here. I may also name an alternate representative
31 to serve. Each person I appoint must accept my appointment in order to serve. I understand that I
32 am not required to appoint a representative in order to complete this declaration.

33 I hereby appoint:

34 NAME _____

35 ADDRESS _____

36 TELEPHONE # _____ to act as my representative to make decisions regarding my
37 mental health treatment if I become incapable of giving or withholding informed consent for that
38 treatment.

39 (OPTIONAL)

40 If the person named above refuses or is unable to act on my behalf, or if I revoke that person's
41 authority to act as my representative, I authorize the following person to act as my representative:

42 NAME _____

43 ADDRESS _____

44 TELEPHONE # _____

45 My representative is authorized to make decisions that are consistent with the wishes I have

1 expressed in this declaration or, if not expressed, as are otherwise known to my representative. If
2 my desires are not expressed and are not otherwise known by my representative, my representative
3 is to act in what he or she believes to be my best interests. My representative is also authorized
4 to receive information regarding proposed mental health treatment and to receive, review and consent
5 to disclosure of medical records relating to that treatment.

6 _____

7

8

DIRECTIONS FOR
MENTAL HEALTH TREATMENT

9

10 This declaration permits me to state my wishes regarding mental health treatments including
11 psychoactive medications, admission to and retention in a health care facility for mental health
12 treatment for a period not to exceed 17 days, convulsive treatment and outpatient services.

13 If I become incapable of giving or withholding informed consent for mental health treatment,
14 my wishes are: I CONSENT TO THE FOLLOWING MENTAL HEALTH TREATMENTS: (May include types and dosage of medications, short-term inpatient treatment, a preferred provider or facility, transport to a provider or facility, convulsive treatment or alternative outpatient treatments.)

17 _____

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32 I DO NOT CONSENT TO THE FOLLOWING MENTAL HEALTH TREATMENT: (Consider
33 including your reasons, such as past adverse reaction, allergies or misdiagnosis. Be aware
34 that a person may be treated without consent if the person is held pursuant to civil commitment law.)

36 _____

37

38

39

40

41

42

43

44

45

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45

ADDITIONAL INFORMATION ABOUT MY MENTAL HEALTH TREATMENT NEEDS:
(Consider including mental or physical health history, dietary requirements, religious con-
cerns, people to notify and other matters of importance.)

YOU MUST SIGN HERE FOR THIS DECLARATION TO BE EFFECTIVE:

(Signature/Date)

NOTARY OR WITNESSES

(Have this document notarized by a notary public OR have 2 competent adult witnesses complete the Affirmation of Witnesses.)

NOTARIAL CERTIFICATE:

State of _____
County of _____
Signed or attested before me on _____,
2____, by _____.

Notary Public - State of Oregon

OR

AFFIRMATION OF WITNESSES

I affirm that the person signing this declaration:

- 1 (a) Is personally known to me;
- 2 (b) Signed or acknowledged his or her signature on this declaration in my presence;
- 3 (c) Appears to be of sound mind and not under duress, fraud or undue influence;
- 4 (d) Is not related to me by blood, marriage or adoption;
- 5 (e) Is not a patient or resident in a facility that I or my relative owns or operates;
- 6 (f) Is not my patient and does not receive mental health services from me or my relative; and
- 7 (g) Has not appointed me as a representative in this document.

8

9 Witnessed by:

10 _____

11 (Signature of Witness/ (Printed Name of Witness)

12 Date)

13 _____

14 (Signature of Witness/ (Printed Name of Witness)

15 Date)

16

17

ACCEPTANCE OF APPOINTMENT

18

AS REPRESENTATIVE

19

20

21

22

23

24

25

26

27

28

29 (Signature of (Printed name)

30 Representative/Date)

31 _____

32 (Signature of Alternate (Printed name)

33 Representative/Date)

34

35

36

37

NOTICE TO PERSON
MAKING A DECLARATION FOR
MENTAL HEALTH TREATMENT

38

39

40

41

42

43

44

45

This is an important legal document. It creates a declaration for mental health treatment. Before signing this document, you should know these important facts:

This document allows you to make decisions in advance about certain types of mental health treatment: psychoactive medication, short-term (not to exceed 17 days) admission to a treatment facility, convulsive treatment and outpatient services. Outpatient services are mental health services provided by appointment by licensed professionals and programs. The instructions that you include in this declaration will be followed only if a court or two physicians believe that you are incapable of making treatment decisions. Otherwise, you will be considered capable to give or withhold con-

1 sent for the treatments. Your instructions may be overridden if you are being held pursuant to civil
 2 commitment law.

3 You may also appoint a person as your representative to make treatment decisions for you if
 4 you become incapable. The person you appoint has a duty to act consistently with your desires as
 5 stated in this document or, if not stated, as otherwise known by the representative. If your repre-
 6 sentative does not know your desires, he or she must make decisions in your best interests. For the
 7 appointment to be effective, the person you appoint must accept the appointment in writing. The
 8 person also has the right to withdraw from acting as your representative at any time. A “repre-
 9 sentative” is also referred to as an “attorney-in-fact” in state law but this person does not need to be
 10 an attorney at law.

11 This document will continue in effect for a period of three years unless you become incapable
 12 of participating in mental health treatment decisions. If this occurs, the directive will continue in
 13 effect until you are no longer incapable.

14 You have the right to revoke this document in whole or in part at any time you have not been
 15 determined to be incapable. YOU MAY NOT REVOKE THIS DECLARATION WHEN YOU ARE
 16 CONSIDERED INCAPABLE BY A COURT OR TWO PHYSICIANS. A revocation is effective when
 17 it is communicated to your attending physician or other provider.

18 If there is anything in this document that you do not understand, you should ask a lawyer to
 19 explain it to you. This declaration will not be valid unless it is signed by two qualified witnesses
 20 who are personally known to you and who are present when you sign or acknowledge your signa-
 21 ture.

22 **NOTICE TO PHYSICIAN OR PROVIDER**

23 Under Oregon law, a person may use this declaration to provide consent for mental health
 24 treatment or to appoint a representative to make mental health treatment decisions when the person
 25 is incapable of making those decisions. A person is “incapable” when, in the opinion of a court or
 26 two physicians, the person’s ability to receive and evaluate information effectively or communicate
 27 decisions is impaired to such an extent that the person currently lacks the capacity to make mental
 28 health treatment decisions. This document becomes operative when it is delivered to the person’s
 29 physician or other provider and remains valid until revoked or expired. Upon being presented with
 30 this declaration, a physician or provider must make it a part of the person’s medical record. When
 31 acting under authority of the declaration, a physician or provider must comply with it to the fullest
 32 extent possible. If the physician or provider is unwilling to comply with the declaration, the physi-
 33 cian or provider may withdraw from providing treatment consistent with professional judgment and
 34 must promptly notify the person and the person’s representative and document the notification in
 35 the person’s medical record. A physician or provider who administers or does not administer mental
 36 health treatment according to and in good faith reliance upon the validity of this declaration is not
 37 subject to criminal prosecution, civil liability or professional disciplinary action resulting from a
 38 subsequent finding of the declaration’s invalidity.

39 _____
 40
 41 **SECTION 5. ORS 127.730 is repealed.**

42 **SECTION 6. The amendments to ORS 97.130, 127.700, 127.707 and 127.736 by sections 1 to**
 43 **4 of this 2023 Act and the repeal of ORS 127.730 by section 5 of this 2023 Act apply to docu-**
 44 **ments executed on or after the effective date of this 2023 Act.**