

Enrolled
House Bill 2570

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 Elder Law Section)

CHAPTER

AN ACT

Relating to compensation in protective proceedings; creating new provisions; and amending ORS 125.095.

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

SECTION 1. ORS 125.095 is amended to read:

125.095. (1) Funds of *[the protected person]* **a person subject to a protective proceeding** may be used to pay reasonable *[compensation]* **fees, costs and disbursements** to any visitor, attorney, physician, fiduciary or temporary fiduciary for services *[rendered in]* **related to** the protective proceeding or for services *[rendered]* **provided** on behalf of *[the fiduciary or protected person]* **a fiduciary, respondent, petitioner, cross-petitioner, objector or protected person.**

(2) Prior court approval is required before the payment of *[the]* **fees from the funds of a person subject to a protective proceeding when the payment is to:**

(a) *[of any visitor or]* **A physician** if the fees are incurred for services relating to proceedings arising out of the filing of an objection to a petition, **cross-petition** or motion.

[(3)] **(b) An appointed fiduciary** *[prior court approval is required before payment of compensation to a fiduciary or to the attorneys for a fiduciary]*, except that prior court approval is not required before payment of *[compensation]* **fees** to a conservator if the conservator is a trust company that has complied with ORS 709.030, or if the conservator is the Department of Veterans' Affairs.

(c) Any attorney who has provided services relating to a protective proceeding, including services provided in preparation or anticipation of the filing of a petition in a protective proceeding.

(3) Subject to ORS 125.495 to 125.520, prior court approval is not required before:

(a) **Payment of attorney fees incurred prior to the filing of a petition in a protective proceeding for services unrelated to the protective proceeding; or**

(b) **Payment for services provided by an attorney who is hired as a mediator for mediation services related to a protective proceeding.**

(4) **A pleading that alleges a basis for payment of attorney fees is not required before payment of attorney fees is approved or made under this section.**

(5) **ORCP 68 does not apply to requests for approval and payment of attorney fees made under this chapter.**

SECTION 2. Section 3 of this 2013 Act is added to and made a part of ORS chapter 125.

SECTION 3. (1) As used in this section, "party" means a person represented by an attorney when a request for court approval and payment of attorney fees has been made relating to a protective proceeding under ORS 125.095.

(2) A court shall consider the following factors in determining whether to award attorney fees under ORS 125.095:

(a) The benefit to the person subject to the protective proceeding by the party's actions in the proceeding.

(b) The objective reasonableness of the position asserted by the party.

(c) The party's self-interest in the outcome of the proceeding.

(d) Whether the relief sought by the party was granted in whole or in part, subject to the respondent's right to contest the proceeding.

(e) The conduct of the party in the transactions or occurrences that gave rise to the need for a protective proceeding, including any conduct of the party that was reckless, willful, malicious, in bad faith or illegal.

(f) The extent to which an award of attorney fees in the proceeding would deter others from asserting good faith positions in similar proceedings.

(g) The extent to which an award of attorney fees in the proceeding would deter others from asserting meritless positions in similar proceedings.

(h) The objective reasonableness of the party and the diligence of the party and the attorney during the proceeding.

(i) The objective reasonableness of the party and the diligence of the party in pursuing settlement of the dispute.

(j) Any other factor the court may consider appropriate under the circumstances of the proceeding.

(3) A court shall consider the factors specified in subsection (2) of this section in determining the amount of an award of attorney fees under ORS 125.095. In addition, the court shall consider the following factors in determining the amount of an award of attorney fees:

(a) The time and labor required in the proceeding, the novelty and difficulty of the issues involved and the skill needed to provide the legal services.

(b) The likelihood that the acceptance of the employment on behalf of the party by the attorney would preclude the attorney from other employment, when the likelihood should be apparent or was made apparent to the party.

(c) The fee customarily charged by an attorney in the locality for similar legal services.

(d) The time limitations imposed by the party or the circumstances of the proceeding.

(e) The experience, reputation and ability of the attorney providing the legal services.

(f) The amount of the attorney fees requested relative to the estate of the person subject to the protective proceeding, whether or not the estate of the person subject to the protective proceeding is subject to the direct or indirect control of a conservator.

(4) No single factor listed in subsections (2) and (3) of this section shall be controlling in the court's determination regarding attorney fees under this section.

(5) In an appeal from the award of or denial of a request for attorney fees under ORS 125.095 and this section, the court reviewing the award may not modify the decision of the court below in making or denying an award, or the decision of that court as to the amount of the award, except upon a finding of an abuse of discretion.

Passed by House March 6, 2013

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Ramona J. Line, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate May 2, 2013

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Peter Courtney, President of Senate

Received by Governor:

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Approved:

.....M,....., 2013

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2013

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Kate Brown, Secretary of State