

A-Engrossed
House Bill 2570

Ordered by the House February 28
Including House Amendments dated February 28

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)

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.

[Clarifies] **Provides** that funds of [*protected*] person **subject to protective proceeding** may be used to pay reasonable [*compensation rendered on behalf of respondent in*] **fees, costs and disbursements for services related to** protective proceeding.

[Provides that court approval is required for payment of attorney fees for services provided in protective proceeding by attorney who appeared in proceeding. Expects payment of attorney fees for certain services provided prior to filing of protective proceeding.]

Clarifies when court approval is required for payment of fees from funds of person subject to protective proceeding.

[Allows party or attorney to file motion requesting court approval and payment of attorney fees at any time during pendency of protective proceeding but no later than two years after date services were provided.]

Specifies factors for court to consider in determining whether to award attorney fees in protective proceeding and in determining amount of attorney fees to award.

Prohibits reviewing court from modifying lower court decision making or denying award of attorney fees except upon finding of abuse of discretion.

A BILL FOR AN ACT

1
2 Relating to compensation in protective proceedings; creating new provisions; and amending ORS
3 125.095.

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

5 **SECTION 1.** ORS 125.095 is amended to read:

6 125.095. (1) Funds of [*the protected person*] **a person subject to a protective proceeding** may
7 be used to pay reasonable [*compensation*] **fees, costs and disbursements** to any visitor, attorney,
8 physician, fiduciary or temporary fiduciary for services [*rendered in*] **related to** the protective pro-
9 ceeding or for services [*rendered*] **provided** on behalf of [*the fiduciary or protected person*] **a**
10 **fiduciary, respondent, petitioner, cross-petitioner, objector or protected person.**

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

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

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

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

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 proceeding.

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

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

5 (b) Payment for services provided by an attorney who is hired as a mediator for medi-
6 ation services related to a protective proceeding.

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

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

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

12 **SECTION 3.** (1) As used in this section, “party” means a person represented by an at-
13 torney when a request for court approval and payment of attorney fees has been made re-
14 lating to a protective proceeding under ORS 125.095.

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

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

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

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

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

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

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

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

30 (h) The objective reasonableness of the party and the diligence of the party and the at-
31 torney during the proceeding.

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

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

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

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

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

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

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

- 1 **(e) The experience, reputation and ability of the attorney providing the legal services.**
2 **(f) The amount of the attorney fees requested relative to the estate of the person subject**
3 **to the protective proceeding, whether or not the estate of the person subject to the protec-**
4 **tive proceeding is subject to the direct or indirect control of a conservator.**
5 **(4) No single factor listed in subsections (2) and (3) of this section shall be controlling in**
6 **the court's determination regarding attorney fees under this section.**
7 **(5) In an appeal from the award of or denial of a request for attorney fees under ORS**
8 **125.095 and this section, the court reviewing the award may not modify the decision of the**
9 **court below in making or denying an award, or the decision of that court as to the amount**
10 **of the award, except upon a finding of an abuse of discretion.**

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