

A-Engrossed Senate Bill 59

Ordered by the Senate March 24
Including Senate Amendments dated March 24

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor Kate Brown for Oregon Long-Term Care Ombudsman)

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.

Authorizes Long Term Care Ombudsman to petition for protective order regarding *[person]* **resident** in long term care facility, *[or]* residential facility **or adult foster home** when ombudsman believes *[person]* **resident** who is subject of petition is in need of protective *[services]* **order**.

Limits disclosure of protected information to amount of information reasonably necessary to prevent or lessen serious and imminent threat to health or safety of *[person]* **resident** who is subject of petition.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to the Long Term Care Ombudsman; and declaring an emergency.

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

4 **SECTION 1. Section 2 of this 2017 Act is added to and made a part of ORS chapter 125.**

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

6 (a) **“Adult foster home” has the meaning given that term in ORS 443.705.**

7 (b) **“Long term care facility” has the meaning given that term in ORS 442.015.**

8 (c) **“Long Term Care Ombudsman” means the office of the Long Term Care Ombudsman**
9 **established in ORS 441.403.**

10 (d) **“Party” means, with respect to a petition for a protective order made under this**
11 **section:**

12 (A) **The resident who is the subject of the petition.**

13 (B) **A person who has petitioned for appointment, or who has been appointed, as a**
14 **fiduciary for the resident who is the subject of the petition.**

15 (C) **A person, not otherwise a party under this paragraph, who has filed objections as**
16 **allowed under this chapter in a protective proceeding involving the resident who is the sub-**
17 **ject of the petition.**

18 (D) **A visitor appointed by the court in a protective proceeding involving the resident who**
19 **is the subject of the petition.**

20 (e) **“Protected information” means “protected health information” as defined in ORS**
21 **192.556, information maintained as confidential under ORS 441.407 and legal information re-**
22 **garding the resident who is the subject of the petition.**

23 (f) **“Residential facility” has the meaning given that term in ORS 441.402.**

24 (2)(a) **As regards a resident in a long term care facility, a residential facility or an adult**

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 foster home, the Long Term Care Ombudsman may petition for a protective order under this
2 chapter to:

3 (A) Terminate a protective proceeding;

4 (B) Remove a fiduciary;

5 (C) Modify the powers or authority of a fiduciary;

6 (D) Approve or disapprove a fiduciary's actions;

7 (E) Appoint an attorney for the resident; or

8 (F) Exercise any of the court's authority pursuant to ORS 125.025 that will protect the
9 resident or estate of a resident in a long term care facility, a residential facility or an adult
10 foster home, or of a respondent or protected person who is a resident in a long term care
11 facility, a residential facility or an adult foster home.

12 (b) The ombudsman may file a petition under this subsection when the ombudsman be-
13 lieves the resident who is the subject of the petition is in need of a protective order described
14 in paragraph (a) of this subsection.

15 (3)(a) The Long Term Care Ombudsman shall give notice of the filing of a petition for a
16 protective order under subsection (2) of this section to:

17 (A) All parties;

18 (B) Any attorney, if known, who represented the resident who is the subject of the peti-
19 tion at any time during any other protective proceeding involving the resident; and

20 (C) Any other person that the court requires.

21 (b) The notice required under this subsection must be given in the manner set forth in
22 ORS 125.065 and contain the information specified in ORS 125.070.

23 (4)(a) When the Long Term Care Ombudsman petitions for a protective order under
24 subsection (2) of this section, the ombudsman shall disclose to the court only the minimum
25 amount of protected information about the resident who is the subject of the petition that
26 is reasonably necessary to prevent or lessen a serious and imminent threat to the health or
27 safety of the resident who is the subject of the petition.

28 (b) The ombudsman may disclose protected information under this subsection without
29 authorization from the resident who is the subject of the petition or the resident's fiduciary,
30 if any, provided the disclosure is made in good faith and with the belief that the disclosure
31 is the minimum amount of protected information about the resident or fiduciary that is
32 reasonably necessary to prevent or lessen a serious and imminent threat to the health or
33 safety of the resident who is the subject of the petition.

34 (c) Any protected information disclosed by the ombudsman under this subsection shall
35 remain confidential and must be identified and marked by the ombudsman as confidential and
36 protected information that is subject to the requirements of this subsection.

37 (d) Protected information disclosed under this subsection is subject to inspection only by
38 the parties to the proceeding and their attorneys as provided in paragraph (e) of this sub-
39 section. Protected information disclosed under this subsection is not subject to inspection
40 by members of the public except pursuant to a court order entered after a showing of good
41 cause.

42 (e) The court may enter an order allowing inspection of protected information subject to
43 disclosure under this subsection upon the filing of a written request for inspection and the
44 payment of any fees or costs charged to copy the protected information.

45 (5) Notwithstanding ORS 125.155 (4), to the extent that the report of a visitor appointed

1 by the court under ORS 125.150 contains protected information that is subject to the re-
2 quirements of subsection (4) of this section, the report in its entirety shall be considered
3 subject to the requirements of subsection (4) of this section and may be disclosed only as
4 provided in subsection (4)(d) and (e) of this section.

5 (6) Nothing in this section is intended to limit the application of ORS 125.050 to the use
6 of protected information disclosed under this section in proceedings under this chapter.

7 **SECTION 3.** This 2017 Act being necessary for the immediate preservation of the public
8 peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect
9 on its passage.

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