

Senate Bill 59

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 **as introduced**.

Authorizes Long Term Care Ombudsman to petition for protective order regarding person in long term care facility or residential facility when ombudsman believes person who is subject of petition is in need of protective services.

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 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) "Long term care facility" has the meaning given that term in ORS 442.015.

7 (b) "Long Term Care Ombudsman" means the office of the Long Term Care Ombudsman
8 established in ORS 441.403.

9 (c) "Party" means, with respect to a petition for a protective order made under this
10 section:

11 (A) The person who is the subject of the petition.

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

14 (C) A person, not otherwise a party under this paragraph, who has filed objections as
15 allowed under this chapter in a protective proceeding involving the person who is the subject
16 of the petition.

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

19 (d) "Protected information" means "protected health information" as defined in ORS
20 192.556 and mental health, financial, substantiated abuse and legal information regarding the
21 person who is the subject of the petition.

22 (e) "Protective services" means a service to be provided by the Department of Human
23 Services, the Long Term Care Ombudsman, the Oregon Public Guardian and Conservator or
24 any other state agency, directly or indirectly, in response to the need of a person for pro-
25 tection from harm or neglect or for legal representation.

26 (f) "Residential facility" has the meaning given that term in ORS 441.402.

27 (2)(a) As regards a person in a long term care facility or a residential facility, the Long

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 **Term Care Ombudsman may petition for a protective order under this chapter:**

2 **(A) For the provision of protective services;**

3 **(B) Terminating a protective proceeding;**

4 **(C) Removing a fiduciary;**

5 **(D) Modifying the powers or authority of a fiduciary;**

6 **(E) Approving or disapproving a fiduciary's actions; or**

7 **(F) Exercising any of the court's authority pursuant to ORS 125.025 that will protect the**
 8 **person or estate of a person in a long term care facility or a residential facility, or of a re-**
 9 **spondent or protected person who is in a long term care facility or a residential facility.**

10 **(b) The ombudsman may file a petition under this subsection when the ombudsman be-**
 11 **lieves the person who is the subject of the petition is in need of protective services.**

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

14 **(A) All parties;**

15 **(B) Any attorney, if known, who represented the person who is the subject of the petition**
 16 **at any time during any other protective proceeding involving the person; and**

17 **(C) Any other person that the court requires.**

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

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

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

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

34 **(d) Information disclosed under this subsection is subject to inspection only by the par-**
 35 **ties to the proceeding and their attorneys as provided in paragraph (e) of this subsection.**
 36 **Information disclosed under this subsection is not subject to inspection by members of the**
 37 **public except pursuant to a court order entered after a showing of good cause.**

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

41 **(5) Notwithstanding ORS 125.155 (4), to the extent that the report of a visitor appointed**
 42 **by the court under ORS 125.150 contains information that is subject to the requirements of**
 43 **subsection (4) of this section, the report in its entirety shall be considered subject to the**
 44 **requirements of subsection (4) of this section and may be disclosed only as provided in sub-**
 45 **section (4)(d) and (e) of this section.**

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

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

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