

# Enrolled House Bill 4094

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

CHAPTER .....

AN ACT

Relating to courts; creating new provisions; and amending ORS 125.055 and 125.210.

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

**SECTION 1. (1) As used in this section, “incapacitated” and “minor” have the meanings given those terms in ORS 125.005.**

**(2) An affidavit submitted to a court in support of a petition for approval of settlement of a personal injury claim of an incapacitated person, a minor or a decedent is confidential. The caption of the affidavit must state that the affidavit is confidential. The affidavit is not subject to inspection except pursuant to a court order entered after a showing of good cause.**

**SECTION 2. ORS 125.055 is amended to read:**

125.055. (1) A petition in a protective proceeding that seeks the appointment of a fiduciary must designate the type of fiduciary that the petitioner seeks to have appointed. If the petition does not request the appointment of a fiduciary, or if the petition requests both the appointment of a fiduciary and some other protective order, the petition must contain a statement of the nature of the protective order requested. The caption of the petition must reflect the type of fiduciary whose appointment is requested or, if the appointment of a fiduciary is not requested, the nature of the protective order requested. An original and duplicate copy of the petition must be filed with the court.

(2) A petition in a protective proceeding must contain the following information to the extent that the petitioner is aware of the information or to the extent that the petitioner is able to acquire the information with reasonable effort:

(a) The name, age, residence address and current location of the respondent.

(b) The interest of the petitioner.

(c) The name, age and address of the petitioner and any person nominated as fiduciary in the petition and the relationship of the **person** nominated [*person*] to the respondent.

(d) A statement as to whether the person nominated [*to be*] as fiduciary:

**(A)** Has been convicted of a crime[.];

**(B)** Has filed for or received protection under the bankruptcy laws [*or*];

**(C) Has caused any loss resulting in a surcharge under ORS 125.025 (3)(e) or a similar statute of another jurisdiction;**

**(D) Has been removed as a fiduciary under ORS 125.225; or**

**(E) Has had a license revoked or canceled that was required by the laws of any state for the practice of a profession or occupation. [*If the nominated person has been convicted of a crime, filed***

for or received protection under bankruptcy laws or had a professional or occupational license revoked or canceled, the petition shall contain a statement of the circumstances surrounding those events.]

**(e) If an event listed in paragraph (d) of this subsection has occurred, a statement of the circumstances surrounding the event.**

**(f)** If the person nominated as **fiduciary** is not the petitioner, [*the statement must indicate*] a **statement indicating** that the person nominated is willing and able to serve.

[(e)] **(g)** The name and address of any fiduciary that has been appointed for the respondent by a court of any state, any trustee for a trust established by or for the respondent, any person appointed as a health care representative under the provisions of ORS 127.505 to 127.660 and any person acting as attorney-in-fact for the respondent under a power of attorney.

[(f)] **(h)** The name and address of the respondent's treating physician and any other person who is providing care to the respondent.

[(g)] **(i)** The factual information that supports the request for the appointment of a fiduciary or entry of other protective order, less restrictive alternatives to the appointment of a fiduciary that have been considered and why the alternatives are inadequate and the names and addresses of all persons who have information that would support a finding that an adult respondent is incapacitated or financially incapable.

[(h)] **(j)** A statement that indicates whether the [*nominated*] person **nominated as fiduciary** intends to place the respondent in a mental health treatment facility, a nursing home or other residential facility.

[(i)] **(k)** A general description of the estate of the respondent and the respondent's sources of income and the amount of that income.

[(j)] **(L)** A statement indicating whether the person nominated as fiduciary is a public or private agency or organization that provides services to the respondent or an employee of a public or private agency or organization that provides services to the respondent.

[(k)] **(m)** A statement that indicates whether the petitioner is petitioning for plenary authority or specified limited authority for the person nominated as fiduciary.

(3) In addition to the requirements of subsection (2) of this section:

(a) If a petition seeks appointment of a guardian, the petition must contain a statement on whether the guardian will exercise any control over the estate of the respondent. If the guardian will exercise any control over the estate of the respondent, the petition must contain a statement of the monthly income of the respondent, the sources of the respondent's income, and the amount of any moneys that the guardian will be holding for the respondent at the time of the appointment.

(b) If the petition seeks the appointment of a guardian for an adult respondent, of a guardian for a minor respondent who is more than 16 years of age, in cases where the court determines there is the likelihood that a petition seeking appointment of a guardian for the respondent as an adult will be filed before the date that the respondent attains majority, in accordance with subsection (6) of this section, or as an adult, or of a temporary fiduciary who will exercise the powers of a guardian for an adult respondent, the petition must contain a statement notifying the court that a visitor must be appointed.

(4) In addition to the requirements of subsection (2) of this section, if a petition seeks appointment of a conservator or a temporary fiduciary who will exercise the powers of a conservator or if a petition seeks a protective order relating to the estate of the respondent, the petition must contain the petitioner's estimate of the value of the estate.

(5) A petitioner may join parties in a petition in the manner provided by ORCP 28 for the joining of defendants.

(6) A parent or guardian of a minor may file a petition that seeks the appointment of a guardian for the minor as an adult, to become effective on the date that the minor attains majority, at any time within 90 days before the date that the minor attains majority or at any other time determined by the court to be necessary and appropriate to ensure the ongoing protection, safety and welfare of the minor upon attaining majority.

(7) The court shall review a petition seeking appointment of a guardian and shall dismiss the proceeding without prejudice, or require that the petition be amended, if the court determines that the petition does not meet the requirements of this section.

**SECTION 3.** ORS 125.210 is amended to read:

125.210. (1)(a) A person nominated as a fiduciary [*who*] **shall inform the court of the circumstances of an event before the person is appointed if the person:**

(A) Has been convicted of a crime[.];

(B) Has filed for or received protection under the bankruptcy laws [*or*];

(C) **Has caused any loss resulting in a surcharge under ORS 125.025 (3)(e) or a similar statute of another jurisdiction;**

(D) **Has been removed as a fiduciary under ORS 125.225; or**

(E) Has had a license revoked or canceled that was required by the laws of any state for the practice of a profession or occupation [*must inform the court of the circumstances of those events before the person is appointed*].

(b) If the person nominated [*to be*] as a fiduciary is also the petitioner, the information required by this [*section*] **subsection** may be provided in the petition for appointment of a fiduciary in the manner specified by ORS 125.055.

(2) A person who [*has been*] **is appointed as a fiduciary [*who*] shall inform the court of the circumstances of an event immediately if the person:**

(a) Is convicted of a crime[.];

(b) Files for or receives protection under the bankruptcy laws [*or*];

(c) **Causes any loss resulting in a surcharge under ORS 125.025 (3)(e) or a similar statute of another jurisdiction;**

(d) **Is removed as a fiduciary under ORS 125.225; or**

(e) Has a license revoked or canceled that is required by the laws of any state for the practice of a profession or occupation [*must inform the court of the circumstances of those events immediately*].

(3) A person who is required to give notice to the court under subsection (2) of this section [*must*] **shall** also give notice to those persons listed in ORS 125.060 (3).

(4) The court may decline to appoint a person as a fiduciary, or may remove a person as a fiduciary, if the person fails to comply with the provisions of this section.

**SECTION 4. Section 1 of this 2018 Act applies to affidavits submitted on or after the effective date of this 2018 Act.**

**SECTION 5. The amendments to ORS 125.055 by section 2 of this 2018 Act apply to petitions in protective proceedings filed on or after the effective date of this 2018 Act.**

**Passed by House February 19, 2018**

**Repassed by House March 3, 2018**

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

**Passed by Senate March 1, 2018**

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Peter Courtney, President of Senate

**Received by Governor:**

.....M,....., 2018

**Approved:**

.....M,....., 2018

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Kate Brown, Governor

**Filed in Office of Secretary of State:**

.....M,....., 2018

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Dennis Richardson, Secretary of State