

Senate Bill 251

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 John A. Kitzhaber, M.D., for Department of Veterans' Affairs)

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**.

Clarifies Department of Veterans' Affairs status and authority as fiduciary and representative payee appointed by United States Department of Veterans Affairs and United States Social Security Administration.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to powers of the Department of Veterans' Affairs; amending ORS 113.085, 125.240, 125.410,
3 406.050, 406.085, 406.100 and 406.120; and declaring an emergency.

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

5 **SECTION 1.** ORS 406.050 is amended to read:

6 406.050. In addition to other powers and duties, the Department of Veterans' Affairs is author-
7 ized:

8 (1) To cooperate with officers and agencies of the United States in all matters affecting
9 veterans' welfare.

10 (2) To accept monetary and nonmonetary grants, donations and gifts on behalf of this state from
11 any person or governmental or nongovernmental entity. The department shall deposit with the State
12 Treasurer all monetary grants, donations and gifts received. The State Treasurer shall credit the
13 amounts deposited to a trust fund established for the purposes of this section. Moneys in the trust
14 fund are continuously appropriated to the department and may be expended for the purposes speci-
15 fied in subsections (3), (4) and (5) of this section. Interest earned on the moneys in the trust fund
16 established under this subsection shall accrue to the trust fund.

17 (3) To expend all or any portion of a monetary grant, donation or gift for the purposes specified
18 in the grant, donation or gift.

19 (4) To expend moneys in the trust fund established under subsection (2) of this section as the
20 department deems appropriate for purposes consistent with the department's authority under Arti-
21 cles XI-A and XI-F(2) of the Oregon Constitution and under this chapter and ORS chapters 88, 273,
22 407 and 408 if:

23 (a) The department determines that the purpose specified in the grant, donation or gift has been
24 satisfied, has expired or is not feasible or appropriate; or

25 (b) Expenditure of trust fund moneys is not limited by the specific terms of a specific grant,
26 donation or gift.

27 (5) To expend or otherwise dispose of a nonmonetary grant, donation or gift received by selling
28 or otherwise converting a grant, donation or gift into moneys unless the sale or conversion is in-
29 consistent with a limitation specified in the grant, donation or gift. Notwithstanding a specified

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 limitation, the department may sell or otherwise convert a nonmonetary grant, donation or gift into
 2 moneys if the department determines that the limitation has been satisfied, has expired or is not
 3 feasible or appropriate. The department shall deposit the moneys realized from any sale or con-
 4 version under this subsection into the trust fund established in subsection (2) of this section.

5 (6) If the department determines that the nature of a nonmonetary grant, donation or gift makes
 6 its use by the department, or its sale or conversion to moneys for use by the department not feasible
 7 or appropriate, to donate or otherwise transfer all or any portion of the nonmonetary grant, do-
 8 nation or gift to:

9 (a) A person or governmental or nongovernmental entity that the department determines is en-
 10 gaged in serving veterans or veterans' survivors or dependents.

11 (b) A veteran or veteran's survivor or dependent whom the department determines is in need
 12 of emergency assistance.

13 (7) To act as agent or attorney in fact for any veteran and the dependents or beneficiaries of
 14 any veteran relating to rights under any federal or state law.

15 **(8) To act without bond as a fiduciary appointed by the United States Department of**
 16 **Veterans Affairs to manage the benefits and pay debts for:**

17 **(a) A person who qualifies for benefits from the United States Department of Veterans**
 18 **Affairs; and**

19 **(b) A dependent, an immediate family member, a survivor or a former spouse who has**
 20 **not remarried of a person who qualifies for benefits, or who qualified for benefits while alive,**
 21 **from the United States Department of Veterans Affairs, as those persons are defined by rule**
 22 **by the Department of Veterans' Affairs.**

23 **(9) To act without bond as a representative payee appointed by and under the rules of the**
 24 **United States Social Security Administration for any veteran and the dependents or benefi-**
 25 **ciaries of any veteran who receives federal Social Security or Supplemental Security Income**
 26 **benefits.**

27 [(8)] **(10) To act without bond as conservator of the estate of:**

28 (a) A person who qualifies for benefits from the United States Department of Veterans Affairs.

29 (b) A dependent, an immediate family member, a survivor or a former spouse who has not re-
 30 married of a person who qualifies for benefits, or who qualified for benefits while alive, from the
 31 United States Department of Veterans Affairs, as those persons are defined by rule by the Depart-
 32 ment of Veterans' Affairs.

33 [(9)] **(11) On behalf of the State of Oregon, to extend such assistance as the department deter-**
 34 **mines to be reasonably required to any veteran and to the dependents of any such veteran, in the**
 35 **prosecution of any claim before the United States Department of Veterans Affairs, or any other**
 36 **federal or state agency, the securing of employment or relief and any other benefits to which the**
 37 **veteran and the dependents of the veteran might be entitled.**

38 [(10)] **(12) To require and collect such reasonable service charges as the department determines,**
 39 **by rule, are necessary and expedient to carry out a duty, or to exercise a power or authority, con-**
 40 **ferred on the department by law.**

41 [(11)] **(13) [The Department of Veterans' Affairs may] To adopt rules and regulations with respect**
 42 **to all matters of administration to carry into effect the purposes of this section.**

43 **SECTION 2.** ORS 406.085 is amended to read:

44 406.085. The Conservatorship Revolving Account is created, separate and distinct from the
 45 General Fund, to provide for disbursement of funds for the beneficiary. Funds may also be disbursed

1 from the Conservatorship Revolving Account to the Conservatorship Services Account in compen-
 2 sation for claims arising under ORS 406.100. The Conservatorship Revolving Account shall consist
 3 of all money received by the Department of Veterans' Affairs as conservator, [or] personal repre-
 4 sentative, **fiduciary or representative payee** [herein]. Disbursement from the account shall be made
 5 by the department. Interest earned by the account shall be credited to the account.

6 **SECTION 3.** ORS 406.100 is amended to read:

7 406.100. If the Department of Veterans' Affairs is appointed as a conservator under ORS
 8 406.050, [or] a personal representative under ORS 113.085, **a fiduciary by the United States De-**
 9 **partment of Veterans Affairs or a representative payee by the United States Social Security**
 10 **Administration**, the Department of Veterans' Affairs shall have a claim against the estate of the
 11 protected person, [or] the decedent, [as the case may be] **the veteran or the veteran's benefici-**
 12 **aries for purposes of ORS 406.050 (8) or (9)**, for all of the following:

13 (1) Reasonable expenses incurred by the department in the execution or administration of the
 14 estate.

15 (2) After the appointment of the department as conservator, reasonable compensation for ordi-
 16 nary and unusual services, as set forth by rule by the department.

17 (3) After the appointment of the department as personal representative, compensation as pro-
 18 vided in ORS 116.173.

19 (4) With prior approval by the court having probate jurisdiction over the estate, fees charged
 20 to the department by the Attorney General for advice or assistance in the performance of the
 21 department's duties as conservator or personal representative of the estate.

22 (5) **After the appointment of the department as a fiduciary by the United States Depart-**
 23 **ment of Veterans Affairs, compensation as determined by the United States Department of**
 24 **Veterans Affairs.**

25 (6) **After the appointment of the department as representative payee by the United States**
 26 **Social Security Administration, compensation as determined by the administration.**

27 **SECTION 4.** ORS 406.120 is amended to read:

28 406.120. (1) The Conservatorship Services Account is established as a separate account within
 29 the Oregon War Veterans' Fund. The Conservatorship Services Account shall consist of all moneys
 30 received by the Department of Veterans' Affairs as payment of claims arising under ORS 406.100.

31 (2) The moneys in the Conservatorship Services Account are continuously appropriated to the
 32 department for payment of expenses incurred while serving as conservator, [under ORS 406.050 or]
 33 personal representative, [under ORS 406.085] **fiduciary or representative payee.**

34 (3) Moneys in the Conservatorship Services Account shall be held and set aside separately from
 35 the other moneys in the Oregon War Veterans' Fund, but such account may be accounted for as part
 36 of the Oregon War Veterans' Fund.

37 **SECTION 5.** ORS 113.085 is amended to read:

38 113.085. (1) Except as provided in subsection (2) of this section, upon the filing of the petition,
 39 if there is no will or there is a will and it has been proved, the court shall appoint a qualified person
 40 it finds suitable as personal representative, giving preference in the following order:

41 (a) The executor named in the will.

42 (b) The surviving spouse of the decedent or the nominee of the surviving spouse of the decedent.

43 (c) The nearest of kin of the decedent or the nominee of the nearest of kin of the decedent.

44 (d) The Director of Human Services or the Director of the Oregon Health Authority, or an at-
 45 torney approved under ORS 113.086, if the decedent received public assistance as defined in ORS

1 411.010, received medical assistance as defined in ORS 414.025 or received care at an institution
2 described in ORS 179.321 (1) and it appears that the assistance or the cost of care may be recovered
3 from the estate of the decedent.

4 (e) The Department of Veterans' Affairs, if the decedent was a protected person under ORS
5 406.050 [(8)] (10), and the department has joined in the petition for such appointment.

6 (f) Any other person.

7 (2) Except as provided in subsection (3) of this section, the court shall appoint the Department
8 of State Lands as personal representative if it appears that the decedent died wholly intestate and
9 without known heirs. The Attorney General shall represent the Department of State Lands in the
10 administration of the estate. Any funds received by the Department of State Lands in the capacity
11 of personal representative may be deposited in accounts, separate and distinct from the General
12 Fund, established with the State Treasurer. Interest earned by such account shall be credited to that
13 account.

14 (3) The court may appoint a person other than the Department of State Lands to administer the
15 estate of a decedent who died wholly intestate and without known heirs if the person filing a peti-
16 tion under ORS 113.035 attaches written authorization from an estate administrator of the Depart-
17 ment of State Lands appointed under ORS 113.235 approving the filing of the petition by the person.
18 Except as provided by rule adopted by the Director of the Department of State Lands, an estate
19 administrator may consent to the appointment of another person to act as personal representative
20 only if it appears after investigation that the estate is insolvent.

21 **SECTION 6.** ORS 125.240, as amended by section 20, chapter 117, Oregon Laws 2014, is
22 amended to read:

23 125.240. (1) If a petition seeks the appointment of a professional fiduciary, the petition must
24 contain the following information in addition to that information required under ORS 125.055:

25 (a) Proof that the professional fiduciary, or an individual responsible for making decisions for
26 clients or for managing client assets for the professional fiduciary, is certified by the Center for
27 Guardianship Certification or its successor organization as a National Certified Guardian or a Na-
28 tional Master Guardian.

29 (b) A description of the events that led to the involvement of the professional fiduciary in the
30 case.

31 (c) The professional fiduciary's educational background and professional experience.

32 (d) The fees charged by the professional fiduciary and whether the fees are on an hourly basis
33 or are based on charges for individual services rendered.

34 (e) The names of providers of direct services to protected persons that are repeatedly used by
35 the professional fiduciary under contract.

36 (f) The disclosures required under ORS 125.221 if the person nominated to act as a professional
37 fiduciary will employ a person in which the nominated person has a pecuniary or financial interest.

38 (g) The number of protected persons for whom the person performs fiduciary services at the time
39 of the petition.

40 (h) Whether the professional fiduciary has ever had a claim against the bond of the professional
41 fiduciary and a description of the circumstances causing the claim.

42 (i) Whether the professional fiduciary or any staff with responsibility for making decisions for
43 clients or for management of client assets has ever filed for bankruptcy and the date of filing.

44 (j)(A) Whether the professional fiduciary or any staff with responsibility for making decisions for
45 clients or for management of client assets has ever been denied a professional license that is directly

1 related to responsibilities of the professional fiduciary, or has ever held a professional license that
2 is directly related to responsibilities of the professional fiduciary that was revoked or canceled. If
3 such a license has been denied, revoked or canceled, the petition must reflect the date of the denial,
4 revocation or cancellation and the name of the regulatory body that denied, revoked or canceled the
5 license.

6 (B) A professional license under this paragraph includes a certificate described in paragraph (a)
7 of this subsection.

8 (k) A statement that the criminal records check required under subsection (2) of this section
9 does not disqualify the person from acting as a professional fiduciary.

10 (L) Whether the professional fiduciary and any staff responsible for making decisions for clients
11 or for management of client assets is or has been certified by a national or state association of
12 professional fiduciaries, the name of any such association and whether the professional fiduciary or
13 other staff person has ever been disciplined by any such association and the result of the discipli-
14 nary action.

15 (m) The name, address and telephone number of the individual who is to act as primary decision
16 maker for the protected person and the name of the person with whom the protected person will
17 have personal contact if that person is not the person who will act as primary decision maker for
18 the protected person.

19 (2)(a) If a petition seeks the appointment of a professional fiduciary as described in subsection
20 (5) of this section, the professional fiduciary and all staff with responsibility for making decisions for
21 clients or for management of client assets must undergo a criminal records check before the court
22 may appoint the professional fiduciary. The results of the criminal records check shall be provided
23 by the petitioner to the court. Results of criminal records checks submitted to the court are confi-
24 dential, shall be subject to inspection only by the parties to the proceedings and their attorneys, and
25 shall not be subject to inspection by members of the public except pursuant to a court order entered
26 after a showing of good cause. A professional fiduciary must disclose to the court any criminal
27 conviction of the professional fiduciary that occurs after the criminal records check was performed.
28 The criminal records check under this subsection shall consist of a check for a criminal record in
29 the State of Oregon and a national criminal records check if:

30 (A) The person has resided in another state within five years before the date that the criminal
31 records check is performed;

32 (B) The person has disclosed the existence of a criminal conviction; or

33 (C) A criminal records check in Oregon discloses the existence of a criminal record in another
34 jurisdiction.

35 (b) The requirements of this subsection do not apply to any person who serves as a public
36 guardian or conservator, or any staff of a public guardian or conservator, who is operating under
37 ORS 125.700 to 125.730 or 406.050 and who is otherwise required to acquire a criminal records check
38 for other purposes.

39 (3)(a) If a petition seeks the appointment of a county public guardian and conservator operating
40 under the provisions of ORS 125.700 to 125.730, or the appointment of a conservator under ORS
41 406.050 [(8)] (10), the petition need not contain the information described in subsection (1)(e) or (m)
42 of this section.

43 (b) If a county public guardian and conservator operating under the provisions of ORS 125.700
44 to 125.730 is appointed to act as a professional fiduciary, or a conservator operating under the au-
45 thority of ORS 406.050 [(8)] (10) is appointed, the public guardian or conservator must file with the

1 court within three days after receipt of written notice of the appointment a statement containing
2 the name, address and telephone number of the individual who will act as primary decision maker
3 for the protected person and the name of the person with whom the protected person will have
4 personal contact if the person named as primary decision maker will not have personal contact with
5 the protected person.

6 (4) If the court appoints a professional fiduciary as described in subsection (5) of this section,
7 the professional fiduciary must update all information required to be disclosed by subsection (1) of
8 this section and provide a copy of the updated statement upon the request of the protected person
9 or upon the request of any person entitled to notice under ORS 125.060 (3). The professional
10 fiduciary must provide an updated statement without demand to the court, the protected person and
11 persons entitled to notice under ORS 125.060 (3) at any time that there is a change in the informa-
12 tion provided under subsection (1)(m) or (3)(b) of this section.

13 (5) As used in this section, “professional fiduciary” means a person nominated as a fiduciary or
14 serving as a fiduciary who is acting at the same time as a fiduciary for three or more protected
15 persons who are not related to the fiduciary.

16 **SECTION 7.** ORS 125.410, as amended by section 21, chapter 117, Oregon Laws 2014, is
17 amended to read:

18 125.410. (1) Except as provided in subsection (2) of this section, the court shall require a
19 conservator to furnish a bond conditioned upon faithful discharge of all duties of the conservator
20 according to law, with sureties as specified by the court. Unless otherwise directed, the bond must
21 be in the amount of the aggregate capital value of the property of the estate in the control of the
22 conservator plus one year’s estimated income minus the value of securities and money deposited
23 under arrangements requiring an order of the court for their removal and the value of any real
24 property that the conservator, by express limitation of power, lacks power to sell or convey without
25 court authorization.

26 (2)(a) The court may waive a bond for good cause shown.

27 (b) Subsection (1) of this section does not affect the provisions of ORS 709.240, relating to a trust
28 company acting as fiduciary, ORS 125.715, relating to a county public guardian and conservator
29 acting as fiduciary, section 7, chapter 117, Oregon Laws 2014, relating to the Oregon Public
30 Guardian and Conservator or a deputy public guardian and conservator acting as fiduciary under
31 sections 2 to 7, chapter 117, Oregon Laws 2014, or ORS 406.050 [(8)] (10), relating to the Department
32 of Veterans’ Affairs acting as fiduciary.

33 (3) Sureties for a bond required under this section are jointly and severally liable with the
34 conservator and with each other.

35 (4) Letters of conservatorship may not be issued until the bond required by this section is ap-
36 proved by the court.

37 (5) The bond of the conservator continues in effect until the sureties on the bond are released
38 by order of the court.

39 (6) The court may at any time increase or reduce the amount of the bond required of a
40 conservator for the protection of the protected person and the estate of the protected person.

41 (7) If a surety on a bond required by this section gives notice of intent to cancel the bond, the
42 conservator shall execute and file in the protective proceeding a new bond before the cancellation
43 date specified by the surety. The new bond shall be in the amount and subject to those conditions
44 that may be required by the court. If the conservator fails to file a new bond, the authority of the
45 conservator ends on the date specified by the surety for cancellation of the bond. The letters of

1 conservatorship issued to the conservator are void from that date, and the conservator must make
2 and file the final accounting of the conservator.

3 **SECTION 8. This 2015 Act being necessary for the immediate preservation of the public**
4 **peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect**
5 **on its passage.**

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