

OREGON STATE BAR
Legislative Proposal
Part I – Legislative Summary

RE:

Submitted by: Elder Law Section

Legislative Contact(s):

This bill would amend ORS Statute(s): 125.440(2)

1. PROBLEM PRESENTED (including level of severity):

Some conservatorships are established for the purpose of receiving and managing funds for the benefit of a protected person who would qualify for certain needs-based government benefits if those funds are placed into a Supplemental Needs Trust for the protected person. The Court has the authority to establish these Supplemental Needs Trusts, but the conservatorship cannot be closed even after the Supplemental Needs Trust has been established and funded, due to the prohibition in ORS 125.440(2). The accounting requirements create a significant administrative expense which are a burden to the funds in the trust.

2. SOLUTION:

By allowing a conservatorship to be closed upon the creation and funding of a Supplemental Needs Trust, much of the administrative cost burden to the trust would be eliminated. This would allow more of the funds in the Supplemental Needs Trust to be preserved for the needs of the protected person.

3. PUBLIC POLICY IMPLICATION of this proposed legislative change:

This would allow more of the protected person’s funds to be available for their supplemental needs by reducing the administrative burden on the Trustee. This would also slightly reduce the Courts’ caseloads.

4. Could the problem be addressed through a NON-LEGISLATIVE SOLUTION, such as administrative rule or education?

No.

5. COULD ANOTHER SECTION OR GROUP MORE APPROPRIATELY INTRODUCE THE BILL? If so, have you suggested it to the section or group?

No, it could not.

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Please complete this form and return both the form with your proposed language via e-mail to slajoie@osbar.org by **APRIL 1, 2006**.

If you have any questions, contact the Public Affairs Department at
(503) 431-6358 or toll-free in Oregon (800) 452-8260.
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6. IDENTIFY THE GROUP OR CONSTITUENCIES THAT WOULD BE MOST IMPACTED or interested in this change. Who would support it and who would oppose it?

No group or constituencies that would oppose.

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Part II – Legislative Language

ORS 125.440 (2) is amended to read:

(2) Create revocable or irrevocable trusts of the property of the estate. A trust created by the conservator may extend beyond the period of disability of the protected person or beyond the life of the protected person. A trust created by the conservator must be consistent with the will of the protected person or any other written or oral expression of testamentary intent made by the protected person before the person became incapacitated. The court may [*not*] approve a trust that has the effect of terminating the conservatorship if any of the following are true:

(a) the Trust is created for the purpose of qualifying the protected person for needs-based government benefits or maintaining the protected person's eligibility for needs-based government benefits;

(b) the value of the conservatorship estate, including the amount to be transferred to the trust, does not exceed \$50,000.00;

(c) the purpose of establishing the conservatorship was to create such a trust; or

(d) other good cause is shown to the Court.

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