

# House Bill 2147

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor Theodore R. Kulongoski for Oregon Department of Administrative Services)

## 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**.

Establishes program in Department of Revenue under which state agencies making payments to person may set off amount of debt person owes department or other public body from payment.

Becomes operative on January 1, 2010.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to setoff of debts owed public bodies; creating new provisions; amending ORS 461.253 and  
3 461.715; and declaring an emergency.

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

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

6 (a) **"Debt" means an amount owed by a person and may include interest, penalties,**  
7 **charges, costs, fees or any other amount.**

8 (b) **"Setoff" means the application of moneys owed by a state agency to a person against**  
9 **a debt owed by the person.**

10 (c) **"State agency" means any state officer, board, commission, corporation, institution,**  
11 **department or other public body in state government as defined in ORS 174.111.**

12 (2) **The Department of Revenue shall establish a setoff program under which payments**  
13 **to be made by a state agency to a person may be used to satisfy:**

14 (a) **Debts owed to the department; or**

15 (b) **Debts assigned to the department for collection under ORS 293.250.**

16 (3) **Before a state agency makes payments to a person, the agency may contact the de-**  
17 **partment to determine whether the person owes a debt described in subsection (2) of this**  
18 **section. If the person owes a debt the state agency shall send the payment, in an amount**  
19 **not exceeding the amount of the debt, to the department. The department shall apply the**  
20 **payment to the debt in the manner prescribed by the department by rule and applicable**  
21 **provisions of ORS chapters 293, 305 and 314.**

22 (4) **The state agency using the setoff procedure described in this section may prescribe**  
23 **by rule a fee to be collected from each person who owes a debt described in subsection (2)**  
24 **of this section and to whom a payment may be made. The amount of the fee shall reasonably**  
25 **reflect the actual cost of the service provided and may be deducted from the payment made**  
26 **to the person.**

27 (5) **Notwithstanding subsection (3) of this section, a state agency that makes payments**  
28 **to a person may set off the amount of any debt the person owes the agency from a payment**  
29 **made to the person by the agency.**

30 (6) **A state agency and the department may enter into an interagency agreement gov-**

**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 **erning the operation of the setoff program between the agency and the department. The**  
 2 **agreement may address, but is not limited to, provisions relating to file transfer formats,**  
 3 **security protocols, report formats, transfers of moneys, cost recovery calculations and pay-**  
 4 **ment timelines.**

5 **SECTION 2.** ORS 461.715 is amended to read:

6 **461.715. (1) The Oregon State Lottery Commission shall establish and operate data match**  
 7 **systems using automated data exchanges with the Division of Child Support of the Depart-**  
 8 **ment of Justice and the Department of Revenue under section 1 of this 2009 Act to identify**  
 9 **delinquent child support obligors and persons who owe debts to the Department of Revenue**  
 10 **or debts assigned to the Department of Revenue for collection under ORS 293.250.**  
 11 **Notwithstanding ORS 314.835, any information necessary to identify the obligors or debtors**  
 12 **shall be made available to the lottery commission through the data match systems.**

13 *[(1)] (2) [The Oregon State Lottery Commission, by rule, shall develop procedures whereby:]*

14 *[(a)] Before paying any portion of a lottery prize in excess of \$600, the lottery commission shall*  
 15 *[check the name and Social Security number of] use the data match systems to determine if the*  
 16 *person entitled to payment [against a computer database containing the names and Social Security*  
 17 *numbers of obligors who are] of the lottery prize is an obligor delinquent in paying child support*  
 18 *obligations or a person who owes a debt to the Department of Revenue or a debt assigned to*  
 19 *the Department of Revenue for collection under ORS 293.250.*

20 *[(b) When the person is listed in the database, the lottery commission shall:]*

21 *[(A) Place a 30-day hold on any payment to the person;]*

22 *[(B) Inform the person of the hold; and]*

23 *[(C) Notify the Division of Child Support of the Department of Justice that a delinquent obligor*  
 24 *has won a lottery prize or is entitled to payment on a lottery prize.]*

25 **(3) If the lottery commission finds that the person entitled to payment of the lottery**  
 26 **prize is listed in a data match system described in subsection (2) of this section, the lottery**  
 27 **commission shall hold payment to the person and inform the person of the hold.**

28 **(4) If the person entitled to payment of the lottery prize is delinquent in paying child**  
 29 **support obligations, the lottery commission shall first notify the Division of Child Support**  
 30 **of the Department of Justice that a delinquent obligor is entitled to payment of a lottery**  
 31 **prize. The division and commission shall establish procedures for the transfer of payments**  
 32 **and setoff of the debt under this section.**

33 **(5) Following any setoff under subsection (4) of this section, if the person entitled to**  
 34 **payment of the lottery prize owes a debt to the Department or Revenue or a debt that has**  
 35 **been assigned to the department for collection under ORS 293.250, the lottery commission**  
 36 **shall follow the procedures described in section 1 of this 2009 Act for setoff of the debt.**

37 *[(c) If a garnishment proceeding is initiated within the 30-day hold period, the lottery commission*  
 38 *shall continue to hold any payment to the person pending disposition of the proceeding.]*

39 *[(d) If a garnishment proceeding is not initiated within the 30-day hold period, the lottery com-*  
 40 *mission shall make payment on the prize to the person at the end of the 30-day hold period or when*  
 41 *the division notifies the lottery commission that a garnishment proceeding will not be initiated, which-*  
 42 *ever is sooner.]*

43 *[(2) The lottery commission shall establish and operate a data match system using automated data*  
 44 *exchanges with the division that identifies delinquent child support obligors. Any information necessary*  
 45 *to identify delinquent obligors and hold a payment on a prize shall be available to the lottery com-*

1 *mission through the data match system.]*

2 [(3)] (6) The Department of Justice **and the Department of Revenue** [*and the Oregon State*  
 3 *Lottery Commission*] shall **each** enter into an agreement **with the lottery commission** regarding  
 4 the procedures required by subsections (1) [*and (2)*] **to (5)** of this section. **Each agreement shall**  
 5 **include provisions requiring the Department of Justice or the Department of Revenue to pay**  
 6 **all expenses incurred under this section. Expenses may not be paid under this section from**  
 7 **lottery funds.**

8 **SECTION 3.** Section 4 of this 2009 Act is added to and made a part of ORS 98.302 to 98.436.

9 **SECTION 4.** (1) The Department of State Lands shall establish and operate a data match  
 10 system using automated data exchanges with the Department of Revenue under section 1  
 11 of this 2009 Act to identify persons who owe debts to the Department of Revenue or debts  
 12 assigned to the Department of Revenue for collection under ORS 293.250. Notwithstanding  
 13 ORS 314.835, any information necessary to identify the debtors with an interest in unclaimed  
 14 property shall be made available to the Department of State Lands through the data match  
 15 system.

16 (2) Before allowing a claim for unclaimed property, the Department of State Lands shall  
 17 use the data match system to determine if the person claiming an interest in unclaimed  
 18 property is a person who owes a debt to the Department of Revenue or a debt assigned to  
 19 the Department of Revenue for collection under ORS 293.250.

20 (3) If the Department of State Lands finds that the name of a person claiming an interest  
 21 in unclaimed property is listed in the data match system, the department shall hold payment  
 22 to the person and shall notify the Department of Revenue and the person of the hold. The  
 23 Department of State Lands shall follow the procedures described in section 1 of this 2009 Act  
 24 for setoff of the debt.

25 (4) The Department of State Lands and the Department of Revenue shall enter into an  
 26 agreement regarding the procedures required by subsections (1) to (3) of this section.

27 (5) The Department of State Lands may adopt rules necessary to implement this section.

28 **SECTION 5.** ORS 461.253 is amended to read:

29 461.253. (1) Payment of a prize may be made to any person pursuant to a voluntary assignment  
 30 of the right to receive future periodic prize payments, in whole or in part. Payment of a prize pur-  
 31 suant to an assignment made under this section must be made to a person designated as assignee  
 32 under an appropriate judicial order of the circuit court for the county in which the assignor resides  
 33 or in which the headquarters of the Oregon State Lottery Commission are located.

34 (2) A copy of the petition for an order described in subsection (1) of this section and copies of  
 35 all notices of any hearing in the matter shall be served on the commission not later than 10 days  
 36 prior to any hearing or entry of any order. A nonrefundable processing fee of \$500 for each assignee  
 37 shall be paid to the commission when the copy of the petition is served on the commission.

38 (3) The commission may intervene in a proceeding to protect the interests of the commission but  
 39 shall not be considered an indispensable or necessary party. Notwithstanding the failure or refusal  
 40 of the commission to appear in any proceeding, the Director of the Oregon State Lottery, the com-  
 41 mission and the state shall be immune from liability for, and shall be discharged of all further li-  
 42 ability with respect to, any amounts paid according to the terms of an order issued under this  
 43 section.

44 (4) A circuit court receiving a petition may issue an order approving the assignment and di-  
 45 recting the commission to pay to the assignee all future prize payments so assigned upon finding

1 that all of the following conditions have been met:

2 (a) The assignment has been memorialized in writing and executed by the assignor and is subject  
3 to Oregon law;

4 (b) The assignor provides a sworn declaration to the court attesting that the assignor is re-  
5 presented by independent legal counsel in connection with the assignment, has had the opportunity  
6 to receive independent financial and tax advice concerning the effects of the assignment, is of sound  
7 mind and is not acting under duress;

8 (c) The proposed assignment does not and will not include or cover payments or portions of  
9 payments that are subject to *[a 30-day hold]* **any setoff** under ORS 461.715, unless appropriate pro-  
10 vision is made in the order to satisfy the obligations giving rise to the *[hold]* **setoff**; and

11 (d) The proposed assignment and court order shall not require the commission to divide any  
12 prize payment so that portions of a single prize payment must be made to more than three persons  
13 at a time.

14 (5) After receipt of a certified copy of a court order granted under this section, the commission  
15 shall acknowledge in writing to both the assignor and the assignee the agreement of the commission  
16 to make the prize payments in accordance with the provisions of the order. The commission shall  
17 thereafter make the prize payments in accordance with the order.

18 (6) *[No]* A modification or amendment to any assignment authorized by this section, and *[no]*  
19 **any** additional or subsequent assignment of any prize, *[shall be]* **is not** valid or binding on the  
20 commission unless the modification, amendment or assignment is authorized by a separate judicial  
21 order issued in compliance with this section.

22 **SECTION 6. Sections 1 and 4 of this 2009 Act and the amendments to ORS 461.715 and**  
23 **461.253 by sections 2 and 5 of this 2009 Act apply to payments and claims made on or after**  
24 **January 1, 2010.**

25 **SECTION 7. (1) Sections 1, 3 and 4 of this 2009 Act and the amendments to ORS 461.715**  
26 **and 461.253 by sections 2 and 5 of this 2009 Act become operative January 1, 2010.**

27 **(2) The Department of Revenue, the Oregon State Lottery Commission, the Department**  
28 **of Justice, the Department of State Lands or any other state agency as defined in section 1**  
29 **of this 2009 Act may take any action before the operative date specified in subsection (1) of**  
30 **this section that is necessary to enable the department, commission or agency to exercise,**  
31 **on or after the operative date specified in subsection (1) of this section, all the duties, func-**  
32 **tions and powers conferred upon the department, commission or agency by sections 1 and 4**  
33 **of this 2009 Act and the amendments to ORS 461.715 and 461.253 by sections 2 and 5 of this**  
34 **2009 Act.**

35 **SECTION 8. This 2009 Act being necessary for the immediate preservation of the public**  
36 **peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect**  
37 **on its passage.**

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