

Enrolled
House Bill 2687

Sponsored by COMMITTEE ON JUDICIARY (at the request of Oregon Trial Lawyers Association)

CHAPTER

AN ACT

Relating to receipt of moneys on behalf of a minor; creating new provisions; and amending ORS 126.725.

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

SECTION 1. ORS 126.725 is amended to read:

126.725. (1) A person having legal custody of a minor may enter into a settlement agreement with a person against whom the minor has a claim if:

(a) A conservator has not been appointed for a minor;

(b) The total amount of the claim, **not including reimbursement of medical expenses, liens, reasonable attorney fees and costs of suit**, is \$25,000 or less **if paid in cash or if paid by the purchase of a premium for an annuity**;

(c) The moneys paid under the settlement agreement will be [*deposited directly into a federally insured savings account in the sole name of the minor with notice of the deposit to the minor*] **paid as set forth in subsections (3) and (4) of this section**; and

(d) The person entering into the settlement agreement on behalf of the minor completes an affidavit or verified statement that attests that the person has made a reasonable inquiry and that:

(A) To the best of the person's knowledge, the minor will be fully compensated by the settlement; or

(B) There is no practical way to obtain additional amounts from the party entering into the settlement agreement with the minor.

(2) The attorney representing the person entering into the settlement agreement on behalf of the minor, if any, shall maintain the affidavit or verified statement completed under subsection (1)(d) of this section in the attorney's file for two years after the minor attains the age of 21 years.

(3) The moneys payable under the settlement agreement must be paid as follows:

(a) If the minor or person entering into the settlement agreement on behalf of the minor is represented by an attorney and the settlement is paid in cash, by direct deposit into the attorney's trust account maintained pursuant to rules of professional conduct adopted under ORS 9.490 to be held for the benefit of the minor. The attorney shall deposit the moneys received on behalf of the minor directly into a federally insured savings account that earns interest in the sole name of the minor, and provide notice of the deposit to the minor and the person entering into the settlement agreement on behalf of the minor. Notice shall be delivered by personal service or first class mail.

(b) If the minor or person entering into the settlement agreement on behalf of the minor is not represented by an attorney and the settlement is paid in cash, directly into a federally

insured savings account that earns interest in the sole name of the minor. Notice of the deposit to the minor shall be delivered by personal service or first class mail.

(c) If paid by purchase of an annuity, by direct payment to the provider of the annuity with the minor designated as the sole beneficiary of the annuity.

(4) The moneys in the minor's savings account established under subsection (3) of this section may not be withdrawn, removed, paid out or transferred to any person, including the minor, except as follows:

- (a) Pursuant to court order;
- (b) Upon the minor's attainment of 18 years of age; or
- (c) Upon the minor's death.

[2] (5) If a settlement agreement is entered into in compliance with subsection (1) of this section, the signature of the person entering into the settlement agreement on behalf of the minor is binding on the minor without the need for further court approval or review and has the same force and effect as if the minor were a competent adult entering into the settlement agreement.

[3] (6) A person acting in good faith on behalf of a minor under this section is not liable to the minor for the moneys paid in settlement or for any other claim arising out of the settlement.

SECTION 2. (1) Except as provided in subsection (4) of this section, a person under a duty to pay moneys to a minor pursuant to a judgment of the court in an amount not exceeding \$25,000 may pay the moneys to a person having legal custody of the minor with whom the minor resides or to a guardian of the minor.

(2) The moneys paid under subsection (1) of this section must be paid as follows:

(a) If the minor or person to whom payment is made is represented by an attorney and the judgment is paid in cash, by direct deposit into the attorney's trust account maintained pursuant to rules of professional conduct adopted under ORS 9.490 to be held for the benefit of the minor. The attorney shall deposit the moneys received on behalf of the minor directly into a federally insured savings account that earns interest in the sole name of the minor, and provide notice of the deposit to the minor and the person to whom payment is made. Notice shall be delivered by personal service or first class mail.

(b) If the minor or person to whom payment is made is not represented by an attorney and the judgment is paid in cash, directly into a federally insured savings account that earns interest in the sole name of the minor. Notice of the deposit shall be delivered to the minor by personal service or first class mail.

(c) If the judgment is paid by purchase of an annuity, by direct payment to the provider of the annuity with the minor designated as the sole beneficiary of the annuity.

(3) The moneys in the minor's savings account established under subsection (2) of this section may not be withdrawn, removed, paid out or transferred to any person, including the minor, except as follows:

- (a) Pursuant to court order;
- (b) Upon the minor's attainment of 18 years of age; or
- (c) Upon the minor's death.

(4) This section does not apply if the person making payment has actual knowledge that a conservator has been appointed or proceedings for appointment of a conservator of the estate of the minor are pending.

SECTION 3. (1) The Legislative Assembly finds that there are in the State of Oregon unemancipated minors entitled to payment or delivery of moneys under ORS 126.700 or 126.725 or section 2 of this 2009 Act who are capable of establishing and maintaining a bank account in their sole name for their sole use and administration but who cannot contract to establish a bank account due to perceived legal limitations affecting contracts with minors. The purpose of this section is to address those limitations.

(2) For purposes of this section, "minor" means an unemancipated and unmarried person who is under 18 years of age and entitled to payment or delivery of moneys under ORS 126.700 or 126.725 or section 2 of this 2009 Act.

(3) Notwithstanding any other provision of law, a minor may contract with a bank or financial institution to establish a bank account for the purpose of depositing payments or deliveries of moneys under ORS 126.700 or 126.725 or section 2 of this 2009 Act. Such contract is binding upon the minor and cannot be voided or disaffirmed by the minor based upon the minor's age or status as a minor.

(4) The consent of the minor's parent or legal guardian, or of the person having legal custody of the minor, is not necessary to contract to establish a bank account under this section. The parent, legal guardian or person having legal custody of the minor shall not be liable under a contract by the minor for a bank account unless the parent, legal guardian or person having legal custody of the minor is a party to the minor's contract.

SECTION 4. Section 2 of this 2009 Act and the amendments to ORS 126.725 by section 1 of this 2009 Act apply to amounts paid to minors, settlements made and judgments entered on or after the effective date of this 2009 Act.

Passed by House April 23, 2009

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Chief Clerk of House

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Speaker of House

Passed by Senate May 22, 2009

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President of Senate

Received by Governor:

.....M.,....., 2009

Approved:

.....M.,....., 2009

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Governor

Filed in Office of Secretary of State:

.....M.,....., 2009

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Secretary of State