

A-Engrossed
House Bill 2687

Ordered by the House April 20
Including House Amendments dated April 20

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

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.

Specifies how moneys payable under settlement agreement entered into on behalf of minor or judgment in favor of minor shall be paid. **Allows minor to enter into contract with bank or financial institution that cannot be voided or disaffirmed because of minor's age for purpose of depositing moneys paid for benefit of minor or under settlement agreement.**

A BILL FOR AN ACT

1
2 Relating to receipt of moneys on behalf of a minor; creating new provisions; and amending ORS
3 126.725.

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

5 **SECTION 1.** ORS 126.725 is amended to read:

6 126.725. (1) A person having legal custody of a minor may enter into a settlement agreement
7 with a person against whom the minor has a claim if:

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

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

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

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

17 (A) To the best of the person's knowledge, the minor will be fully compensated by the settle-
18 ment; or

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

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

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

26 (a) **If the minor or person entering into the settlement agreement on behalf of the minor**
27 **is represented by an attorney and the settlement is paid in cash, by direct deposit into the**

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 attorney's trust account maintained pursuant to rules of professional conduct adopted under
2 ORS 9.490 to be held for the benefit of the minor. The attorney shall deposit the moneys re-
3 ceived on behalf of the minor directly into a federally insured savings account that earns
4 interest in the sole name of the minor, and provide notice of the deposit to the minor and
5 the person entering into the settlement agreement on behalf of the minor. Notice shall be
6 delivered by personal service or first class mail.

7 (b) If the minor or person entering into the settlement agreement on behalf of the minor
8 is not represented by an attorney and the settlement is paid in cash, directly into a federally
9 insured savings account that earns interest in the sole name of the minor. Notice of the
10 deposit to the minor shall be delivered by personal service or first class mail.

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

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

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

19 [(2)] (5) If a settlement agreement is entered into in compliance with subsection (1) of this sec-
20 tion, the signature of the person entering into the settlement agreement on behalf of the minor is
21 binding on the minor without the need for further court approval or review and has the same force
22 and effect as if the minor were a competent adult entering into the settlement agreement.

23 [(3)] (6) A person acting in good faith on behalf of a minor under this section is not liable to the
24 minor for the moneys paid in settlement or for any other claim arising out of the settlement.

25 **SECTION 2.** (1) Except as provided in subsection (4) of this section, a person under a duty
26 to pay moneys to a minor pursuant to a judgment of the court in an amount not exceeding
27 \$25,000 may pay the moneys to a person having legal custody of the minor with whom the
28 minor resides or to a guardian of the minor.

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

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

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

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

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

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

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

7 **SECTION 3.** (1) The Legislative Assembly finds that there are in the State of Oregon
8 unemancipated minors entitled to payment or delivery of moneys under ORS 126.700 or
9 126.725 or section 2 of this 2009 Act who are capable of establishing and maintaining a bank
10 account in their sole name for their sole use and administration but who cannot contract to
11 establish a bank account due to perceived legal limitations affecting contracts with minors.
12 The purpose of this section is to address those limitations.

13 (2) For purposes of this section, "minor" means an unemancipated and unmarried person
14 who is under 18 years of age and entitled to payment or delivery of moneys under ORS
15 126.700 or 126.725 or section 2 of this 2009 Act.

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

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

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

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