

House Bill 3245

Sponsored by COMMITTEE ON JUDICIARY (at the request of Oregon Bankers 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 **as introduced**.

Establishes custodial responsibilities and requirements for financial accounts created for benefit of minors.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to financial accounts for the benefit of minors; creating new provisions; amending ORS
3 126.700 and 126.725; and declaring an emergency.

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

5 **SECTION 1. As used in ORS 126.700 and 126.725 and section 4 of this 2009 Act, "minor"**
6 **means any person who has not attained the age of 21 years.**

7 **SECTION 2.** ORS 126.700 is amended to read:

8 126.700. (1) A person under a duty to pay or deliver money or personal property to a minor may
9 pay or deliver the money or property, in amounts not exceeding \$10,000 per year, to:

10 (a) A person having the care and custody of the minor with whom the minor resides;

11 (b) A guardian of the minor; or

12 (c) A financial institution incident to a deposit in a federally insured [*savings*] **interest-bearing**
13 **account [*in the sole name of the minor*] established by and in the name of a person described in**
14 **paragraph (a) or (b) of this subsection for the benefit of the minor in accordance with section**
15 **4 of this 2009 Act** and giving notice of the deposit to the minor.

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

19 (3) The persons, except [*the minor or*] a financial institution under subsection (1)(c) of this sec-
20 tion, receiving money or property for a minor, shall apply the money to the support and education
21 of the minor, and shall not pay themselves except by way of reimbursement for out-of-pocket ex-
22 penses for goods and services necessary for the minor's support. Excess sums shall be preserved for
23 future support of the minor and the balance not so used and the property received for the minor
24 shall be turned over to the minor when the minor attains majority.

25 (4) Persons who pay or deliver money or personal property under this section are not responsi-
26 ble for the proper application of the money or property.

27 **SECTION 3.** ORS 126.725 is amended to read:

28 126.725. (1) A person having legal custody of a minor may enter into a settlement agreement
29 with a person against whom the minor has a claim if:

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

31 (b) The total amount of the claim is \$25,000 or less;

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 (c) The moneys paid under the settlement agreement will be deposited directly into a federally
 2 insured [*savings*] **interest-bearing** account [*in the sole name of the minor*] **established by and in**
 3 **the name of the person having legal custody of the minor for the benefit of the minor in**
 4 **accordance with section 4 of this 2009 Act** with notice of the deposit to the minor; and

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

7 (A) To the best of the person’s knowledge, the minor will be fully compensated by the settle-
 8 ment; or

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

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

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

17 **SECTION 4. (1) As used in this section:**

18 (a) **“Account” means a federally insured interest-bearing account established under ORS**
 19 **126.700 or 126.725.**

20 (b) **“Financially incapable” has the meaning given that term in ORS 125.005.**

21 (c) **“Legal representative” means a personal representative or conservator.**

22 (2) **The person in whose name an account is established is the custodian of the funds in**
 23 **the account.**

24 (3) **If, before the minor for whom an account was established attains the age of 18 years,**
 25 **the custodian dies, becomes financially incapable, resigns as custodian or is otherwise unable**
 26 **or unwilling to continue as custodian, the next person entitled to legal custody of the minor**
 27 **becomes the successor custodian of the account.**

28 (4) **If, after the minor attains the age of 18 years but before attaining the age of 21 years,**
 29 **the custodian dies, becomes financially incapable, resigns as custodian or is otherwise unable**
 30 **or unwilling to continue as custodian, the next person who would be entitled to legal custody**
 31 **of the minor were the minor under the age of 18 years becomes the successor custodian of**
 32 **the account.**

33 (5) **The minor for whom the account is established is the sole beneficiary of the account.**

34 (6) **The funds in the account are indefeasibly vested in the minor but the custodian has**
 35 **all the rights, powers, duties and authority provided in this section and neither the minor**
 36 **nor the minor’s legal representative has any right, power, duty or authority with respect to**
 37 **the funds in the account except as provided in this section.**

38 (7) **The custodian shall hold, manage and disburse the funds in the account for the benefit**
 39 **of the minor. The custodian shall exercise the standard of care that a person owing a**
 40 **fiduciary duty with respect to the property of another exercises.**

41 (8) **The custodian shall keep the funds in the account separate and distinct from all other**
 42 **funds and accounts.**

43 (9) **The custodian shall keep records of all transactions with respect to funds in the ac-**
 44 **count, including information necessary for the preparation of the minor’s tax returns, and**
 45 **shall make the records available for inspection at reasonable intervals by the minor’s parent,**

1 guardian or legal representative or by the minor if the minor has attained 14 years of age.

2 (10) The custodian may pay to the minor or expend for the minor's benefit so much of
3 the funds in the account as the custodian reasonably considers advisable for the use and
4 benefit of the minor without court order but taking into account any other income or prop-
5 erty of the minor that may be applicable or available for the minor's benefit.

6 (11) On petition of an interested person or the minor if the minor has attained 14 years
7 of age, the court may order the custodian to pay to the minor or expend for the minor's
8 benefit so much of the funds in the account as the court considers advisable for the use and
9 benefit of the minor.

10 (12) A payment or expenditure under this section is in addition to, not in substitution for,
11 and does not affect any obligation of any person to support the minor.

12 (13) The custodian is entitled to:

13 (a) Reimbursement from funds in the account for reasonable expenses incurred in the
14 performance of the custodian's duties.

15 (b) Reasonable compensation for services performed as custodian.

16 (14) The custodian need not give a bond.

17 (15) Third persons in good faith and without court order may act on the instructions of,
18 or otherwise deal with, any person who has established an account under ORS 126.700 or
19 126.725 or purporting to act in the capacity of a custodian and, in the absence of knowledge,
20 are not responsible for determining:

21 (a) The validity of the purported custodian's designation;

22 (b) The propriety of, or the authority under this section for, any act of the purported
23 custodian;

24 (c) The validity or propriety of any instrument or instructions executed or given either
25 by the person establishing the account or the purported custodian; or

26 (d) The propriety of the application of any funds of the minor delivered to the purported
27 custodian.

28 (16) The custodian shall transfer any balance of funds in the account to the minor or the
29 minor's estate upon the earlier of:

30 (a) The minor's attainment of 21 years of age; or

31 (b) The minor's death.

32 **SECTION 5.** Section 4 of this 2009 Act and the amendments to ORS 126.700 and 126.725
33 by sections 1 and 2 of this 2009 Act apply to accounts established on or after the effective
34 date of this 2009 Act.

35 **SECTION 6.** 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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