

House Bill 2059

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor John A. Kitzhaber for Department of Human 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**.

Provides that moneys payable to ward in custody of Department of Human Services under settlement agreement or pursuant to judgment shall be paid into trust account or subaccount established by department or Oregon Health Authority for purpose of receiving such funds.

A BILL FOR AN ACT

1
2 Relating to receipt of moneys on behalf of ward in custody of Department of Human Services; cre-
3 ating new provisions; and amending ORS 126.725 and 126.730.

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, rea-
10 sonable attorney fees and costs of suit, is \$25,000 or less if paid in cash or if paid by the purchase
11 of a premium for an annuity;

12 (c) The moneys paid under the settlement agreement will be paid as set forth in subsections (3)
13 and (4) of this section; and

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

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

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

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

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

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

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

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

7 **(d) If the minor is a ward in the custody of the Department of Human Services under**
 8 **ORS 419B.337 and the settlement is paid in cash, directly into a trust account, or subaccount**
 9 **of a trust account, established by the department or the Oregon Health Authority under ORS**
 10 **430.195 for the purpose of receiving moneys payable to the ward under the settlement**
 11 **agreement and that earns interest for the benefit of the ward.**

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

15 (a) Pursuant to court order;

16 (b) Upon the minor's attainment of 18 years of age; or

17 (c) Upon the minor's death.

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

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

24 **SECTION 2.** ORS 126.730 is amended to read:

25 126.730. (1) Except as provided in subsection (4) of this section, a person under a duty to pay
 26 moneys to a minor pursuant to a judgment of the court in an amount not exceeding \$25,000 may pay
 27 the moneys to a person having legal custody of the minor [*with whom the minor resides*] or to a
 28 guardian of the minor. **Unless the minor is a ward in the custody of the Department of Human**
 29 **Services under ORS 419B.337, the minor must reside with the person having legal custody**
 30 **of the minor.**

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

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

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

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

45 **(d) If the minor is a ward in the custody of the Department of Human Services under**

1 **ORS 419B.337 and the judgment is paid in cash, directly into a trust account, or subaccount**
2 **of a trust account, established by the department or the Oregon Health Authority under ORS**
3 **430.195 for the purpose of receiving moneys payable to the ward pursuant to the judgment**
4 **and that earns interest for the benefit of the ward.**

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

8 (a) Pursuant to court order;

9 (b) Upon the minor's attainment of 18 years of age; or

10 (c) Upon the minor's death.

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

14 **SECTION 3. The amendments to ORS 126.725 and 126.730 by sections 1 and 2 of this 2011**
15 **Act apply to settlements made and judgments entered on or after the effective date of this**
16 **2011 Act.**

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