

# Enrolled House Bill 2222

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Attorney General Hardy Myers for Department of Justice)

CHAPTER .....

AN ACT

Relating to crime victims' assistance; creating new provisions; amending ORS 87.490 and 147.245; and repealing ORS 147.355.

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

**SECTION 1.** Sections 2 to 10 of this 2005 Act are added to and made a part of ORS 147.005 to 147.367.

**SECTION 2.** As used in sections 2 to 10 of this 2005 Act:

- (1) "Action" means an action, suit or proceeding.
- (2) "Assistance" means compensation paid by the Department of Justice under ORS 147.005 to 147.367 to or on behalf of an applicant or recipient.
- (3) "Claim" means a claim of an applicant or recipient for damages for injuries against an assailant or any other person or entity alleged to be liable for the injury constituting the basis for the claim.
- (4) "Compromise" means a compromise between an applicant or recipient and an assailant or any other person or entity against whom the applicant or recipient has a claim.
- (5) "Judgment" means a judgment in an action brought by an applicant or recipient to enforce the claim of the applicant or recipient.
- (6) "Recipient" means a person who has received assistance.
- (7) "Settlement" means a settlement between an applicant or recipient and an assailant or any other person or entity against whom the applicant or recipient has a claim.

**SECTION 3.** An applicant or recipient shall promptly provide written notice to the Department of Justice when making a claim or bringing an action to enforce a claim for injuries that formed the basis for assistance. The notice must include the name and address of the assailant and of any other person or entity against whom the claim is made or action is brought. If the claim is made or the action is brought against a corporation, the notice must contain the address of the corporation's principal place of business. If the applicant or recipient is a minor, the parents, legal guardian or foster parent of the applicant or recipient shall give the notice required by this section.

**SECTION 4.** The Department of Justice has a lien upon the amount of any judgment in favor of the applicant or recipient and upon any amount payable to the applicant or recipient under a settlement or compromise for all assistance from the date of the injury that forms the basis of the assistance to the date of the satisfaction of the judgment or final payment under the settlement or compromise.

**SECTION 5.** (1) In order to perfect a lien under section 4 of this 2005 Act, the Department of Justice shall do all of the following:

(a) Upon receiving notice under section 3 of this 2005 Act, record a notice of lien in the County Clerk Lien Record of the county in which the person against whom the claim is made or action is brought resides. If the claim or action is against a corporation, the department shall record the notice of lien in the County Clerk Lien Record of the county in which the corporation has its principal place of business. If the claim or action is against a public body, as defined in ORS 174.109, the department shall record the notice of lien in the County Clerk Lien Record of the county in which the public body has its main office.

(b) Prior to the date of the satisfaction of the judgment or final payment under a settlement or compromise, deliver a copy of the notice of lien by certified mail or personal service to all parties bound by the judgment, settlement or compromise or to an attorney or insurer that represents a party bound by the judgment, settlement or compromise. The department may send the notice by first class mail to any party, attorney or insurer that does not accept the certified mail containing the notice.

(2) Upon the recording of a notice of lien under subsection (1)(a) of this section, the recording officer shall enter the name of the injured person, the approximate date of the injury and the name of the department as a lienor in the hospital and physician lien docket under ORS 87.575 and shall make an index to the hospital and physician lien docket in the names of the injured person and the department.

**SECTION 6.** The form of the notice of lien required by section 5 of this 2005 Act shall be substantially as follows:

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Notice is given by this form that the Department of Justice has provided assistance to \_\_\_\_\_, a person who was injured on or about the \_\_\_\_ day of \_\_\_\_\_ in the city of \_\_\_\_\_ and State of \_\_\_\_\_, and the Department of Justice asserts a lien to the extent provided in section 4 of this 2005 Act for the amount of the assistance upon any amount due and owing \_\_\_\_\_ (name of injured person) under a judgment, settlement or compromise from \_\_\_\_\_ alleged to have caused such injuries and from any other person or entity liable for the injury or obligated to compensate the injured person on account of such injuries.

Department of Justice  
by \_\_\_\_\_,  
Attorney General or designee.

State of Oregon,     )  
                                  ) ss.  
County of \_\_\_\_\_)

I, \_\_\_\_\_, being first duly sworn on oath say: That I am the Attorney General or designee; that I have read the foregoing notice of lien and know the contents of the notice of lien and believe the contents to be true.

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.  
\_\_\_\_\_, Notary Public.

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**SECTION 7.** Immediately after a judgment has been rendered in favor of an applicant or recipient or a settlement or compromise has been agreed upon, all parties bound by the judgment, settlement or compromise shall provide written notice to the Department of Justice of the amount of the judgment, settlement or compromise. After receiving the notice, the department shall send by certified mail a statement of the amount of its lien to all par-

ties bound by the judgment, settlement or compromise or to an attorney or insurer that represents a party bound by the judgment, settlement or compromise. The department may send the statement by first class mail to any party, attorney or insurer that does not accept the certified mail containing the statement.

**SECTION 8.** After a notice of lien is recorded under section 5 of this 2005 Act, a person or entity that makes a payment to the applicant or recipient or to the heirs, personal representatives, assigns or attorneys of the applicant or recipient under a judgment, settlement or compromise without first having paid to the Department of Justice the amount of the department's lien is liable to the department for the amount of the payment to the extent that the lien attached to the payment under section 4 of this 2005 Act.

**SECTION 9.** The Department of Justice has a cause of action against an applicant or recipient who fails to give the notice required by section 3 of this 2005 Act for amounts received by the applicant or recipient pursuant to a judgment, settlement or compromise to the extent that the department would have had a lien under section 4 of this 2005 Act upon the amounts had the notice been given.

**SECTION 10.** The Department of Justice may initiate an action under sections 8 and 9 of this 2005 Act in the circuit court for Marion County, the county where the compensable crime occurred or the county in which any party bound by the judgment, settlement or compromise resides.

**SECTION 11.** ORS 147.245 is amended to read:

147.245. (1) Any moneys recovered by the Department of Justice under ORS 147.345 and [147.355] **sections 2 to 10 of this 2005 Act** shall be credited to the Criminal Injuries Compensation Account.

(2) Any gifts, contributions, grants or federal funds specifically given to the department for the benefit of victims of crimes shall be credited to the Criminal Injuries Compensation Account.

**SECTION 12.** ORS 87.490 is amended to read:

87.490. (1) Except for tax liens, prior encumbrances and prior liens of record on the real or personal property subject to the lien created by ORS 87.445, the lien created by ORS 87.445 is superior to all other liens, **including a lien created by section 4 of this 2005 Act.**

(2) When the lien of an attorney created under ORS 87.445 attaches to a judgment allowing or enforcing a client's lien, the attorney's lien has the same priority as the client's lien with regard to personal or real property subject to the client's lien.

**SECTION 13.** **ORS 147.355 is repealed.**

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**Passed by House March 28, 2005**

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Chief Clerk of House

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Speaker of House

**Passed by Senate June 13, 2005**

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President of Senate

**Received by Governor:**

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**Approved:**

.....M,....., 2005

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Governor

**Filed in Office of Secretary of State:**

.....M,....., 2005

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Secretary of State