

Enrolled House Bill 2253

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Health Care for Secretary of State Kate Brown)

CHAPTER

AN ACT

Relating to substantiating statements; creating new provisions; and amending ORS 87.242, 87.705, 87.710, 87.755, 87.762 and 194.040.

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

SECTION 1. ORS 87.242 is amended to read:

87.242. (1) A person claiming a lien created by ORS 87.216, 87.222 or 87.232 shall file a written notice of claim of lien with the recording officer of the county in which the lien debtor resides, or, if the lien debtor is a business, the county in which the lien debtor has its principal place of business, not later than 60 days after the close of the furnishing of the labor, services or materials. A person claiming a lien created by ORS 87.226 shall file a written notice of claim of lien with the Secretary of State not later than 75 days after the close of the furnishing of the labor, services or materials. **A person claiming a lien created by ORS 87.705 shall file a written notice of claim of lien with the Secretary of State not later than 45 days after the close of the furnishing of the labor, services or materials. A person claiming a lien created by ORS 87.755 shall file a written notice of claim of lien with the Secretary of State not later than 180 days after the close of the furnishing of the labor, services or materials.** The Secretary of State shall include a notice of claim of lien that is filed with the secretary under this subsection in the index maintained by the secretary for filing financing statements pursuant to ORS chapter 79.

(2) The notice of claim of lien required under subsection (1) of this section shall be a statement in writing verified by the [oath] **attestation under penalty of perjury** of the lien claimant and must contain:

- (a) A true statement of the lien claimant's demand after deducting all credits and offsets;
- (b) The name of the owner of the chattel to be charged with the lien;
- (c) A description of the labor, services or materials provided by the lien claimant for the benefit of the owner of the chattel to be charged with the lien;
- (d) A description of the chattel to be charged with the lien sufficient for identification;
- (e) A statement that the amount claimed is a true and bona fide existing debt as of the date of the filing of notice of claim of lien;
- (f) The date on which payment was due to the lien claimant for labor, services or materials;
- (g) The terms of extended payment; and
- (h) Such other information as the Secretary of State may require for the written notice of claim of lien created by ORS 87.226.

(3) If the person entitled to a lien under ORS 87.216 to 87.232 does not properly file a notice of claim of lien within the time required by subsection (1) of this section, the person waives the right to the lien.

SECTION 2. ORS 87.705 is amended to read:

87.705. (1) An agricultural producer that delivers or transfers agricultural produce for consideration to a purchaser has a lien for the contract price of that produce, or for the reasonable value of the produce if there is no contract price. The lien created by this section attaches to all agricultural produce, whether in a raw or processed condition, delivered or transferred to the purchaser by any agricultural producer and to all other inventory of the purchaser. The lien also attaches to proceeds received by the purchaser from the sale by the purchaser to a third party of any raw or processed agricultural produce. If the agricultural produce that an agricultural producer delivers to the purchaser consists of meat animals, the lien also attaches to all accounts receivable by the purchaser from the sale of any agricultural produce to a third party. The lien on the agricultural produce, inventory, proceeds or accounts receivable attaches on the date physical possession of the agricultural produce is delivered or transferred by the agricultural producer to the purchaser or an agent of the purchaser.

(2) An agricultural producer that claims a lien under subsection (1) of this section need not file any notice in order to perfect the lien. The agricultural producer must file a notice of lien as provided in ORS 87.710 **or a notice of claim of lien as provided in ORS 87.242** to extend the lien beyond the normal expiration date.

(3) The lien created by this section is subject to the provisions of ORS 79.0320 (1).

(4) An agreement by an agricultural producer purporting to waive the right to file notice under ORS **87.242** or 87.710 of a lien created by this section is void as contrary to public policy.

SECTION 3. ORS 87.710 is amended to read:

87.710. (1) A lien created under ORS 87.705 expires no later than the end of the 45th day after the date that the final payment to the agricultural producer is originally due, unless the producer extends the lien as provided in subsection (2) of this section **or ORS 87.242**. If the agricultural producer extends the lien, the lien expires no later than the 225th day after the date that the final payment to the producer is originally due.

(2) An agricultural producer may extend a lien created under ORS 87.705 by filing a notice of lien with the Secretary of State **or by filing a notice of claim of lien under ORS 87.242**. **If a notice of lien is filed under this subsection**, the agricultural producer may file the notice only during the period after the date that payment for the agricultural produce is originally due and no later than the 45th day after the date that the final payment for the produce is due. The notice must be supported by affidavit and contain:

(a) A true statement of the agricultural producer's demand after deducting all credits and offsets;

(b) The name of the purchaser that received the agricultural produce to be charged with the lien;

(c) A description of the produce delivered or transferred by the producer sufficient to identify the basis for the lien;

(d) A statement that the amount claimed is a true and bona fide existing debt as of the date of the filing of the notice of lien;

(e) The date that the final payment to the producer was originally due; and

(f) Such other information as the Secretary of State may require.

(3) If an agricultural producer files a notice of lien under this section, the producer shall send notice to all persons that have filed a financing statement under ORS chapter 79 that perfects a security interest in all or part of the same inventory, proceeds or accounts receivable. The notice to those persons must provide the same information contained in the notice of lien required by subsection (2) of this section and be sent by certified mail, return receipt requested.

(4) The agricultural producer must send notice to other persons as required by subsection (3) of this section no later than the 20th day after filing the notice of lien. If the agricultural producer

does not send a person notice within the required time, the lien created under ORS 87.705 becomes subordinate to that person's perfected security interest in the agricultural produce, proceeds or accounts receivable of the purchaser.

(5) For purposes of this section, final payment to the agricultural producer for agricultural produce is due:

(a) On the date specified for payment in the contract between the purchaser and the producer; or

(b) If there is no contract or no date of payment is specified in the contract, two business days after the purchaser takes delivery of the produce.

(6) Notwithstanding ORS 174.120, for purposes of this section and ORS 87.730 and 87.735, if the last day of the period for performing an act is a Saturday, or a legal holiday as specified in ORS 187.010 and 187.020, the period runs until the end of the next day that is not a Saturday or legal holiday.

SECTION 4. ORS 87.755 is amended to read:

87.755. (1) An agricultural producer that delivers or transfers grain for consideration has a lien on the inventory of the purchaser and proceeds received by the purchaser from the selling of the inventory.

(2) The lien created by subsection (1) of this section attaches to the inventory and proceeds on the date physical possession of the grain is delivered or transferred by the agricultural producer to the purchaser or an agent of the purchaser. If grain is delivered or transferred by an agricultural producer to a person other than the purchaser for cleaning or storage, the lien attaches when the grain is physically delivered or transferred to the purchaser or an agent of the purchaser for agreed consideration.

(3) Except as provided under ORS 87.146 (1)(c) and 87.762 (4), the class of lien created by subsection (1) of this section is prior and superior to all other classes of lien or any classes of security interest in the inventory or proceeds, regardless of whether the creditor's lien or security interest attached to the inventory or proceeds before or after the agricultural producer's lien attached under subsection (2) of this section. Except as provided in ORS 87.762 (4), all liens of the class created under subsection (1) of this section, regardless of the date of attachment or the date of notice of lien, are of equal priority and payable pro rata in proportion to the size of each lien.

(4) An agricultural producer who claims a lien under subsection (1) of this section need not file any notice in order to perfect the lien. The agricultural producer must file a notice of lien as provided under ORS 87.762 **or a notice of claim of lien under ORS 87.242** to extend the lien beyond the normal expiration date.

(5) The lien created by subsection (1) of this section is subject to the provisions of ORS 79.0320 (1).

(6) The lien created by subsection (1) of this section is discharged with regard to inventory that is sold by the purchaser or an agent of the purchaser to a third party. Notwithstanding a discharge with regard to inventory sold to a third party, an agricultural producer continues to hold a lien on the proceeds from the sale to a third party and on all remaining inventory of the purchaser.

(7) An agreement by an agricultural producer purporting to waive the right to file notice under ORS **87.242 or** 87.762 of a lien created by subsection (1) of this section is void as contrary to public policy. An agricultural producer may waive the right to file notice under ORS **87.242 or** 87.762 if the purchaser is an association of which the agricultural producer is a member.

SECTION 5. ORS 87.762 is amended to read:

87.762. (1) A lien created under ORS 87.755 expires no later than the end of the 180th day after the date the lien attaches, unless the agricultural producer extends the lien by filing a notice of lien as provided in this section **or by filing a notice of claim of lien under ORS 87.242**. If the agricultural producer extends the lien, the lien expires no later than 18 months after the date the lien attaches.

(2) At any time prior to expiration of the initial lien period, an agricultural producer may extend a lien created under ORS 87.755 by filing a notice of lien with the Secretary of State **or by filing**

a notice of claim of lien under ORS 87.242. If a notice of lien is filed under this subsection, the notice must be supported by affidavit and contain:

(a) A true statement of the demand of the agricultural producer after deducting all credits and offsets;

(b) The name of the person that purchased the grain from the producer;

(c) A description of the grain delivered or transferred by the producer sufficient to identify the basis for the lien;

(d) A statement that the amount claimed is a true and bona fide existing debt as of the date of filing the notice of lien;

(e) The date payment to the producer was originally due; and

(f) Such other information as the Secretary of State may require.

(3) If an agricultural producer files a notice of lien under this section, the producer shall send notice to all persons that have filed a financing statement under ORS chapter 79 that perfects a security interest in all or part of the inventory of the purchaser or the proceeds from the sale of the inventory. The notice to the secured parties must provide the same information contained in the notice required by subsection (2) of this section and be sent by certified mail, return receipt requested.

(4) The agricultural producer must send notice to other persons as required by subsection (3) of this section no later than the 20th day after filing the notice of lien. If the agricultural producer does not send a person notice within the required time, the lien created under ORS 87.755 becomes subordinate to that person's perfected security interest in the inventory or proceeds of the purchaser.

(5) Notwithstanding ORS 174.120, for purposes of this section and ORS 87.772 and 87.777, if the last day of the period for performing an act is a Saturday, or a legal holiday as specified in ORS 187.010 and 187.020, the period runs until the end of the next day that is not a Saturday or legal holiday.

SECTION 6. The Secretary of State shall have the authority to attest to the authenticity of the official acts of public officials in the State of Oregon that are described in ORS 7.130, 194.525 (1)(b), 205.110, 205.140 and 205.220.

SECTION 7. ORS 194.040 is amended to read:

194.040. (1) The Secretary of State shall keep a record of appointment and commission of each notary public. The Secretary of State may certify as to the term of office of such notary public and imprint upon all instruments requiring a notarial certificate.

(2) The Secretary of State may not certify a signature of a notary public on a document:

(a) Regarding allegiance to a government or jurisdiction;

(b) Relating to the relinquishment or renunciation of citizenship, sovereignty, in itinere status or world service authority; or

(c) Setting forth or implying a claim of immunity for the bearer from the laws of this state or nation.

[2] (3) Full faith and credit shall be given to all protestations, attestations and other instruments of publication of all notaries public appointed under ORS 194.010.

Passed by House April 27, 2011

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Ramona Kenady Line, Chief Clerk of House

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

Passed by Senate May 26, 2011

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Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2011

Approved:

.....M,....., 2011

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2011

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Kate Brown, Secretary of State