

A-Engrossed
House Bill 2253

Ordered by the House April 22
Including House Amendments dated April 22

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)

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.

Replaces required verified oath for notice of lien for certain nonpossessory chattel liens with self-executing attestation under penalty of perjury.

Authorizes certain agricultural producers to file notice of claim of certain agricultural services liens pursuant to statute setting forth general requirements for nonpossessory chattel liens.

[Replaces duties of Secretary of State with respect to credentialing or signature certification of members of consular corps with credentialing or signature certification of public officials of public bodies within state.]

Prohibits Secretary of State from certifying notary signatures on documents regarding allegiance to government, relating to relinquishment or renunciation of citizenship or other relationship to governmental authority, or purporting to claim immunity for bearer from laws of state or nation.

A BILL FOR AN ACT

1
2 Relating to substantiating statements; creating new provisions; and amending ORS 87.242, 87.705,
3 87.710, 87.755, 87.762 and 194.040.

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

5 **SECTION 1.** ORS 87.242 is amended to read:

6 87.242. (1) A person claiming a lien created by ORS 87.216, 87.222 or 87.232 shall file a written
7 notice of claim of lien with the recording officer of the county in which the lien debtor resides, or,
8 if the lien debtor is a business, the county in which the lien debtor has its principal place of busi-
9 ness, not later than 60 days after the close of the furnishing of the labor, services or materials. A
10 person claiming a lien created by ORS 87.226 shall file a written notice of claim of lien with the
11 Secretary of State not later than 75 days after the close of the furnishing of the labor, services or
12 materials. **A person claiming a lien created by ORS 87.705 shall file a written notice of claim**
13 **of lien with the Secretary of State not later than 45 days after the close of the furnishing**
14 **of the labor, services or materials. A person claiming a lien created by ORS 87.755 shall file**
15 **a written notice of claim of lien with the Secretary of State not later than 180 days after the**
16 **close of the furnishing of the labor, services or materials.** The Secretary of State shall include
17 a notice of claim of lien that is filed with the secretary under this subsection in the index main-
18 tained by the secretary for filing financing statements pursuant to ORS chapter 79.

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

22 (a) A true statement of the lien claimant's demand after deducting all credits and offsets;

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) The name of the owner of the chattel to be charged with the lien;

2 (c) A description of the labor, services or materials provided by the lien claimant for the benefit
3 of the owner of the chattel to be charged with the lien;

4 (d) A description of the chattel to be charged with the lien sufficient for identification;

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

7 (f) The date on which payment was due to the lien claimant for labor, services or materials;

8 (g) The terms of extended payment; and

9 (h) Such other information as the Secretary of State may require for the written notice of claim
10 of lien created by ORS 87.226.

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

14 **SECTION 2.** ORS 87.705 is amended to read:

15 87.705. (1) An agricultural producer that delivers or transfers agricultural produce for consid-
16 eration to a purchaser has a lien for the contract price of that produce, or for the reasonable value
17 of the produce if there is no contract price. The lien created by this section attaches to all agri-
18 cultural produce, whether in a raw or processed condition, delivered or transferred to the purchaser
19 by any agricultural producer and to all other inventory of the purchaser. The lien also attaches to
20 proceeds received by the purchaser from the sale by the purchaser to a third party of any raw or
21 processed agricultural produce. If the agricultural produce that an agricultural producer delivers to
22 the purchaser consists of meat animals, the lien also attaches to all accounts receivable by the
23 purchaser from the sale of any agricultural produce to a third party. The lien on the agricultural
24 produce, inventory, proceeds or accounts receivable attaches on the date physical possession of the
25 agricultural produce is delivered or transferred by the agricultural producer to the purchaser or an
26 agent of the purchaser.

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

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

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

34 **SECTION 3.** ORS 87.710 is amended to read:

35 87.710. (1) A lien created under ORS 87.705 expires no later than the end of the 45th day after
36 the date that the final payment to the agricultural producer is originally due, unless the producer
37 extends the lien as provided in subsection (2) of this section **or ORS 87.242**. If the agricultural
38 producer extends the lien, the lien expires no later than the 225th day after the date that the final
39 payment to the producer is originally due.

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

1 (a) A true statement of the agricultural producer's demand after deducting all credits and off-
2 sets;

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

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

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

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

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

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

16 (4) The agricultural producer must send notice to other persons as required by subsection (3)
17 of this section no later than the 20th day after filing the notice of lien. If the agricultural producer
18 does not send a person notice within the required time, the lien created under ORS 87.705 becomes
19 subordinate to that person's perfected security interest in the agricultural produce, proceeds or ac-
20 counts receivable of the purchaser.

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

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

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

27 (6) Notwithstanding ORS 174.120, for purposes of this section and ORS 87.730 and 87.735, if the
28 last day of the period for performing an act is a Saturday, or a legal holiday as specified in ORS
29 187.010 and 187.020, the period runs until the end of the next day that is not a Saturday or legal
30 holiday.

31 **SECTION 4.** ORS 87.755 is amended to read:

32 87.755. (1) An agricultural producer that delivers or transfers grain for consideration has a lien
33 on the inventory of the purchaser and proceeds received by the purchaser from the selling of the
34 inventory.

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

41 (3) Except as provided under ORS 87.146 (1)(c) and 87.762 (4), the class of lien created by sub-
42 section (1) of this section is prior and superior to all other classes of lien or any classes of security
43 interest in the inventory or proceeds, regardless of whether the creditor's lien or security interest
44 attached to the inventory or proceeds before or after the agricultural producer's lien attached under
45 subsection (2) of this section. Except as provided in ORS 87.762 (4), all liens of the class created

1 under subsection (1) of this section, regardless of the date of attachment or the date of notice of lien,
2 are of equal priority and payable pro rata in proportion to the size of each lien.

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

7 (5) The lien created by subsection (1) of this section is subject to the provisions of ORS 79.0320
8 (1).

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

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

17 **SECTION 5.** ORS 87.762 is amended to read:

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

23 (2) At any time prior to expiration of the initial lien period, an agricultural producer may extend
24 a lien created under ORS 87.755 by filing a notice of lien with the Secretary of State **or by filing**
25 **a notice of claim of lien under ORS 87.242. If a notice of lien is filed under this subsection,**
26 the notice must be supported by affidavit and contain:

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

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

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

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

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

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

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

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

1 chaser.

2 (5) Notwithstanding ORS 174.120, for purposes of this section and ORS 87.772 and 87.777, if the
3 last day of the period for performing an act is a Saturday, or a legal holiday as specified in ORS
4 187.010 and 187.020, the period runs until the end of the next day that is not a Saturday or legal
5 holiday.

6 **SECTION 6. The Secretary of State shall have the authority to attest to the authenticity**
7 **of the official acts of public officials in the State of Oregon that are described in ORS 7.130,**
8 **194.525 (1)(b), 205.110, 205.140 and 205.220.**

9 **SECTION 7.** ORS 194.040 is amended to read:

10 194.040. (1) The Secretary of State shall keep a record of appointment and commission of each
11 notary public. The Secretary of State may certify as to the term of office of such notary public and
12 imprint upon all instruments requiring a notarial certificate.

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

14 **(a) Regarding allegiance to a government or jurisdiction;**

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

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

19 [(2)] **(3)** Full faith and credit shall be given to all protestations, attestations and other instru-
20 ments of publication of all notaries public appointed under ORS 194.010.

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