

HOUSE AMENDMENTS TO HOUSE BILL 2253

By COMMITTEE ON JUDICIARY

April 22

1 On page 1 of the printed bill, line 2, after “statements;” delete the rest of the line and insert
2 “creating new provisions; and amending ORS 87.242, 87.705, 87.710, 87.755, 87.762 and 194.040.”

3 In line 11, after “materials.” insert “A person claiming a lien created by ORS 87.705 shall file
4 a written notice of claim of lien with the Secretary of State not later than 45 days after the close
5 of the furnishing of the labor, services or materials. A person claiming a lien created by ORS 87.755
6 shall file a written notice of claim of lien with the Secretary of State not later than 180 days after
7 the close of the furnishing of the labor, services or materials.”

8 On page 2, delete lines 4 through 16 and insert:

9 “**SECTION 2.** ORS 87.705 is amended to read:

10 “87.705. (1) An agricultural producer that delivers or transfers agricultural produce for consid-
11 eration to a purchaser has a lien for the contract price of that produce, or for the reasonable value
12 of the produce if there is no contract price. The lien created by this section attaches to all agri-
13 cultural produce, whether in a raw or processed condition, delivered or transferred to the purchaser
14 by any agricultural producer and to all other inventory of the purchaser. The lien also attaches to
15 proceeds received by the purchaser from the sale by the purchaser to a third party of any raw or
16 processed agricultural produce. If the agricultural produce that an agricultural producer delivers to
17 the purchaser consists of meat animals, the lien also attaches to all accounts receivable by the
18 purchaser from the sale of any agricultural produce to a third party. The lien on the agricultural
19 produce, inventory, proceeds or accounts receivable attaches on the date physical possession of the
20 agricultural produce is delivered or transferred by the agricultural producer to the purchaser or an
21 agent of the purchaser.

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

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

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

29 “**SECTION 3.** ORS 87.710 is amended to read:

30 “87.710. (1) A lien created under ORS 87.705 expires no later than the end of the 45th day after
31 the date that the final payment to the agricultural producer is originally due, unless the producer
32 extends the lien as provided in subsection (2) of this section **or ORS 87.242**. If the agricultural
33 producer extends the lien, the lien expires no later than the 225th day after the date that the final
34 payment to the producer is originally due.

35 “(2) An agricultural producer may extend a lien created under ORS 87.705 by filing a notice of

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

6 “(a) A true statement of the agricultural producer’s demand after deducting all credits and off-
7 sets;

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

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

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

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

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

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

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

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

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

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

32 “(6) Notwithstanding ORS 174.120, for purposes of this section and ORS 87.730 and 87.735, if the
33 last day of the period for performing an act is a Saturday, or a legal holiday as specified in ORS
34 187.010 and 187.020, the period runs until the end of the next day that is not a Saturday or legal
35 holiday.

36 “**SECTION 4.** ORS 87.755 is amended to read:

37 “87.755. (1) An agricultural producer that delivers or transfers grain for consideration has a lien
38 on the inventory of the purchaser and proceeds received by the purchaser from the selling of the
39 inventory.

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

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

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

12 “(5) The lien created by subsection (1) of this section is subject to the provisions of ORS 79.0320
13 (1).

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

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

22 “**SECTION 5.** ORS 87.762 is amended to read:

23 “87.762. (1) A lien created under ORS 87.755 expires no later than the end of the 180th day after
24 the date the lien attaches, unless the agricultural producer extends the lien by filing a notice of lien
25 as provided in this section **or by filing a notice of claim of lien under ORS 87.242.** If the agri-
26 cultural producer extends the lien, the lien expires no later than 18 months after the date the lien
27 attaches.

28 “(2) At any time prior to expiration of the initial lien period, an agricultural producer may ex-
29 tend a lien created under ORS 87.755 by filing a notice of lien with the Secretary of State **or by**
30 **filing a notice of claim of lien under ORS 87.242. If a notice of lien is filed under this sub-**
31 **section,** the notice must be supported by affidavit and contain:

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

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

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

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

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

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

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

1 requested.

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

7 “(5) Notwithstanding ORS 174.120, for purposes of this section and ORS 87.772 and 87.777, if the
8 last day of the period for performing an act is a Saturday, or a legal holiday as specified in ORS
9 187.010 and 187.020, the period runs until the end of the next day that is not a Saturday or legal
10 holiday.

11 **“SECTION 6. The Secretary of State shall have the authority to attest to the authenticity**
12 **of the official acts of public officials in the State of Oregon that are described in ORS 7.130,**
13 **194.525 (1)(b), 205.110, 205.140 and 205.220.”.**

14 In line 17, delete “3” and insert “7”.

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