

Enrolled House Bill 2051

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Joint Interim Committee on Water, Agriculture and Natural Resources for Representative Jeff Kropf)

CHAPTER

AN ACT

Relating to liens arising out of agricultural activities; creating new provisions; amending ORS 87.142, 87.226, 87.242, 87.252, 87.346, 87.700, 87.705, 87.710, 87.715, 87.730, 87.735, 87.740, 87.750, 87.755, 87.762, 87.767, 87.772, 87.777, 205.246 and 596.371; repealing ORS 87.720; and declaring an emergency.

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

SECTION 1. Section 2 of this 2001 Act is added to and made a part of ORS 87.700 to 87.740.

SECTION 2. (1) Notices filed with the Secretary of State under ORS 87.710 and certificates filed with the Secretary of State under ORS 87.735 must be in a form prescribed by the Secretary of State. The Secretary of State shall include the notices and certificates in the index maintained by the secretary for filing financing statements pursuant to ORS chapter 79. The secretary shall maintain the notices and certificates as public records for a period of time established by the secretary.

(2) The Secretary of State shall establish fees pursuant to ORS 177.130 for filing notices and certificates and for furnishing copies of notices or certificates. Fees established pursuant to this subsection are nonrefundable.

SECTION 3. If the Secretary of State receives notice of a lien created under ORS 87.226, 87.705 or 87.755, the Secretary of State, upon request, shall furnish the person who filed the lien with a list of persons who have filed a financing statement under ORS 79.4010 that perfects a security interest in the inventory, proceeds or accounts receivable of the lien debtor or purchaser. The list must include:

- (1) The name and address of the secured party for each statement or notice;**
- (2) The filing number and date of filing for the financing statement in the index maintained by the Secretary of State; and**
- (3) Other information that the Secretary of State considers necessary or proper.**

SECTION 4. An agricultural cooperative organized and operating under ORS chapter 62 must send a notice to all members of the cooperative annually. The cooperative shall send a member the notice in February or with the member's contract. The notice shall state that members may not file an agricultural produce lien under ORS 87.700 to 87.740 against the cooperative. Failure by a cooperative to send the notice does not give a member lien rights against the cooperative.

SECTION 5. ORS 87.142 is amended to read:

87.142. As used in ORS 87.142 to 87.490[, 87.705, 87.710] and 87.910, unless the context otherwise requires:

(1) "Animal" means any mammal, bird, fish, reptile, amphibian or insect.

(2) "Chattel" includes movable objects that are capable of ownership, but does not include personal rights not reduced to possession but recoverable by an action at law or suit in equity, money, evidence of debt and negotiable instruments.

(3) "Electric cooperative" means a cooperative corporation organized under ORS chapter 62 the principal business of which is the construction, maintenance and operation of an electric transmission and distribution system for the benefit of the members of that cooperative corporation and which has no other principal business or purpose.

(4) "Electric utility" means a corporation engaged in distributing electricity, directly or indirectly, to or for the public and regulated by the Public Utility Commission under ORS chapter 757.

(5) "Excavation" means a shaft, tunnel, incline, adit, drift or other excavation designed for the use, working or draining of a mine.

(6) "Fair market value" means, with respect to a chattel sold at a foreclosure sale under ORS 9.370, 87.142 to 87.490, [87.705, 87.710,] 87.910 and 90.120, the price of chattels of the same kind and condition prevailing in the county of sale at the time of sale.

(7) "Fungible chattels" means chattels of which any unit is the equivalent of any other unit.

(8) "Improvement" means a road, tramway, trail, flume, ditch, pipeline, building, structure, superstructure or boardinghouse used for or in connection with the working or development of a mine.

(9) "Irrigation" includes the use of canals, ditches, pipes, pumps, spraying apparatus and other mechanical devices to water land artificially.

(10) "Mine" means a mine, lode, mining claim or deposit that contains or may contain coal, metal or mineral of any kind.

(11) "Mortgagee" means a person who has a valid subsisting mortgage of record or trust deed of record securing a loan upon any real property to be charged with a lien under ORS 87.352 to 87.362.

(12) "Nursery stock" means fruit trees, fruit-tree stock, nut trees, grapevines, fruit bushes, rose bushes, rose stock, forest and ornamental trees, and shrubs both deciduous and evergreen, florists' stock and cuttings, scions and seedlings of fruit or ornamental trees and shrubs, and all other fruit-bearing plants and parts thereof and plant products for propagation or planting.

(13) "Owner" includes:

(a) A person who has title to a chattel or real property;

(b) A person who is in possession of a chattel or real property under an agreement for the purchase thereof, whether the title thereto is in the person or the vendor of the person; or

(c) A person who is in lawful possession of a chattel or real property.

(14) "Person" includes individuals, corporations, associations, firms, partnerships and joint stock companies.

(15) "Security interest" means an interest in a chattel reserved or created by an agreement that secures payment or performance of an obligation as more particularly defined by ORS 71.2010 (37).

(16) "Timbers" means sawlogs, spars, piles, felled logs and other wood growth that has been cut or separated from land.

(17) "Wood products" includes lumber, slabwood, plywood and other wood products produced from timbers. The term does not include paper or products made from paper.

SECTION 6. ORS 87.226 is amended to read:

87.226. (1) A person who performs labor, supplies materials or provides services on farmland, range, ranch, orchard or in that person's place of business to aid the growing or harvesting of crops or the raising of animals has a lien upon the crops or animals for the reasonable or agreed charges for labor, materials or services. The lien upon crops or animals created by this section [*shall also attach*] **also attaches** to the proceeds of the crops or animals and to the unborn progeny of the animals [*which*] **that** are in utero on the date a notice of claim of lien is filed.

(2) If the lien claimed under subsection (1) of this section is for stud or artificial insemination services, the lien attaches only to the female animal to which the male animal is let or which is artificially inseminated, and the offspring.

(3) The lien on crops and the proceeds thereof attaches on the date a person performs labor, delivers materials or provides services to aid the growing or harvesting of crops. The lien on animals and the proceeds thereof attaches on the date a person performs labor, delivers materials or provides services to aid the raising of animals, or in the case of unborn progeny, attaches on the date the claim of lien is filed.

[~~(3)~~] **(4)** As used in this section:

(a) "Growing and harvesting" includes tilling, sowing, planting, cultivating, irrigating, pruning, thinning, fertilizing, spraying, dusting, cutting, harvesting, reaping, threshing, gathering, transporting, securing or otherwise performing or furnishing labor, service or materials to aid the production of any agricultural crop.

(b) "Materials" includes seed, fertilizer, pesticide, petroleum products and other products used in agricultural practice to aid the growing or harvesting of crops, and any mixtures or preparation for feeding animals, any of the constituent nutrients of an animal ration and any other food for animals.

(c) "Performs labor or provides services" includes personal labor and the use of machinery, equipment or animals rendered by the lien claimant or by the agent of the lien claimant, employee or subcontractor.

(d) "Raising animals" includes feeding, herding, pasturing, shoeing, artificially inseminating, providing male animals for the breeding of female animals, caring for and managing animals kept or raised for use or profit.

SECTION 7. 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[*, for all claims of lien filed on or after January 1, 1988,*] 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 87.226, for all claims of lien filed on or before December 31, 1987, 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, in the county in which the lien debtor has its principal place of business, not later than 75 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 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 8. ORS 87.252 is amended to read:

87.252. (1) When a lien claimant files a notice of claim of lien as required by ORS 87.242, the lien claimant shall send forthwith a copy of the notice to the owner of the chattel to be charged with the lien by registered or certified mail sent to the owner at the owner's last-known address.

(2) When a lien claimant files a notice of claim of lien as required by ORS 87.242, the lien claimant shall send a copy of the notice to all holders of security interests in the chattel to be charged with the lien who duly perfected such security interests by filing notice thereof with the Secretary of State. The notice shall be mailed to holders of perfected security interests within 30 days after the date of filing.

(3) No costs, disbursements or attorney fees otherwise allowable as provided by ORS 87.336 shall be allowed to any party failing to comply with subsections (1) and (2) of this section.

[(4) If the total amount claimed by the lien claimant under ORS 87.226 exceeds \$20,000, and if the lien claimant fails to comply with subsection (2) of this section, then, unless the lien claimant sends a copy of the notice of claim of lien to affected security interest holders disclosed by a search of the Secretary of State's lien records under the account name supplied to the lien claimant by the lien debtor or such other name or assumed business names previously supplied by the lien debtor in writing to the lien claimant, that part of the lien claimed under ORS 87.226 that exceeds \$20,000 shall be subordinate to any security interest in the crops or animals to be charged with the lien if the security interest was duly perfected before the date on which the lien claimant filed a notice of claim of lien and if the holder of the security interest did not receive a notice due to the lien claimant's failure to comply with subsection (2) of this section.]

(4) If the total amount of a lien under ORS 87.226 exceeds \$20,000, that part of the lien exceeding \$20,000 is subordinate to any security interest in the crops, animals or proceeds to be charged with the lien, if:

(a) The holder of the security interest does not receive notice because of the lien claimant's failure to comply with subsection (2) of this section; and

(b) The holder of the security interest duly perfects the interest before the date on which the lien claimant files a notice of claim of lien.

SECTION 9. ORS 87.346 is amended to read:

87.346. (1) When a person claiming a lien under ORS 87.216 to 87.232 receives full payment of the claim including costs of making, filing and recording the lien and expenses incurred in commencing to foreclose it, the person shall file with the Secretary of State or the recording officer of the county in which the claim of lien is recorded a certificate declaring that full payment has been received from the lien debtor and that the claim of lien is discharged.

(2) Upon receiving the certificate, the Secretary of State or recording officer shall enter it in full length in the index of liens upon chattels.

(3) If any lien claimant, after full payment of the claim, within 10 days after being requested thereto, fails to discharge the claim of lien, the person is liable to the owner of the chattel formerly subject to the lien in the sum of \$100 damages and for all actual damages caused by the failure of the lien claimant to discharge the claim of lien. The owner of the chattel shall recover those damages by an action at law.

(4) Upon the expiration of the 18-month time period allowed by ORS 87.266 (2) for filing either a suit to foreclose or a proceeding under ORS 87.272 to 87.306 to foreclose a lien created by ORS 87.226, the owner of chattels subject to a claim of lien *[which]* **that** has ceased to exist pursuant to ORS 87.266 (2) may file with the Secretary of State *[or recording officer of the county in which the claim of lien is recorded]* a notarized certificate indicating:

(a) The date and location where the claim of lien was filed with the Secretary of State *[or county recorder];*

(b) That the lien has expired and is discharged because no suit to foreclose or proceeding under ORS 87.272 to 87.306 has been initiated with respect to such lien claim; and

(c) That the person filing such certificate has personally contacted the clerk of the circuit court in such county to determine that no suit to foreclose or proceeding under ORS 87.272 to 87.306 has been filed prior to the expiration of the time period set forth in ORS 87.266 (2).

(5) Within 10 days after filing a certificate under subsection (4) of this section, the person filing the certificate shall mail or deliver a true copy thereof to all persons having perfected security interests under ORS chapter 79 in the chattel which is the subject of the lien to which the certificate applies.

SECTION 10. ORS 87.700 is amended to read:

87.700. As used in ORS 87.700 to 87.740, unless the context otherwise requires:

(1) "Agricultural produce" means **horticultural products, viticultural products, fruit, berries, vegetables [or], hops, mint oil, hazelnuts or other nuts, dairy products, bee products, hay or straw baled and prepared for market, meat animals [sold or delivered to a food processor] and Christmas trees [sold or delivered to a Christmas tree dealer] as defined in ORS 571.505.**

(2) "Agricultural producer" means a person [*who grows or raises agricultural produce.*] **that engages in or has engaged in the business of growing or producing agricultural produce for market or for delivery or transfer to others owning or holding title to the produce. "Agricultural producer" includes a landowner, producer, landlord, tenant, sharecropper or other person who participates in the growing of agricultural produce and receives a share of the produce.**

[*(3) "Christmas tree" has the meaning given that term in ORS 571.505.*]

[*(4) "Christmas tree dealer" means a person who purchases Christmas trees for resale.*]

[*(5) "Food processor" includes a packing plant, cannery, creamery or other processing plant that processes agricultural produce and is owned or operated by any person other than a cooperative corporation.*]

[*(6)*] **(3)** "Meat animal" has the meaning for that term provided in ORS 603.010.

(4) "Person" means individual, corporation, partnership, association, joint stock company, trust, limited liability company, limited liability partnership, cooperative, government entity, unincorporated organization or other business entity.

(5) "Purchaser" does not include a cooperative organized and operating under ORS chapter 62, including a foreign cooperative authorized to do business in this state under ORS chapter 60, if the agricultural producer is a member of the cooperative.

(6) "Security interest" has the meaning given that term in ORS 71.2010 (37).

SECTION 11. ORS 87.705 is amended to read:

87.705. **(1)** An agricultural producer [*who*] **that** delivers [*any*] **or transfers** agricultural produce **for consideration** to a [*food processor or Christmas tree dealer*] **purchaser** has a lien for the contract price of [*such*] **that** produce, or for [*its*] **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 [*to the food processor or Christmas tree dealer by the agricultural producer and to all other inventory of the food processor or Christmas tree dealer.*] **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 [delivered] that an agricultural producer delivers to the [food processor] purchaser consists of meat animals, the lien also attaches to all accounts receivable by the [food processor] purchaser from the sale of any agricultural produce to a third party. The lien [attaches to] on the agricultural produce, inventory, proceeds or accounts receivable attaches on the date [on which the agricultural producer delivers] physical possession of the agricultural produce is delivered or transferred by the agricultural producer to the [food processor or Christmas tree dealer] 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 to extend the lien beyond the normal expiration date.

(3) The lien created by this section is subject to the provisions of ORS 79.3070 (1).

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

SECTION 12. ORS 87.710 is amended to read:

87.710. *[(1) An agricultural producer shall file a notice evidencing the lien under ORS 87.705 only if a food processor or Christmas tree dealer fails to pay the agricultural producer for such agricultural produce by the date on which payment from the food processor or Christmas tree dealer to the agricultural producer for the agricultural produce is due.]*

(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. 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 [claiming] may extend a lien created under ORS 87.705 [shall file] by filing a notice of lien with the [recording officer of the county where the food is processed or the Christmas trees are grown] Secretary of State. [, within 20 days of the date on which the payment from the food processor or Christmas tree dealer to the agricultural producer for agricultural produce is due or, in the case of meat animals, within 20 days of the date the meat animals are delivered to the food processor. The statement shall be in writing verified by the oath of the agricultural producer and shall contain:] 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; [and]

(b) The name of the [food processor or Christmas tree dealer who] purchaser that received the agricultural produce to be charged with the lien; [and]

(c) A description of the produce [to be charged with the lien sufficient for identification; and] 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 [evidencing the] of lien; [and]

(e) The date [on which] that the final payment to the producer was originally due [for the produce to be charged with the lien]; and

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

(3) [When] If an agricultural producer files [notice evidencing the lien, an agricultural producer claiming a lien under ORS 87.705] a notice of lien under this section, the producer shall [notify] send notice to all [other] persons [who] that have filed [a claim of lien on the inventory of the food processor or Christmas tree dealer or who have filed] a financing statement under ORS chapter 79 that perfects a security interest in [the inventory of the food processor or Christmas tree dealer. If the lien for which an agricultural producer files notice under this section attaches to accounts receivable, the agricultural producer shall notify all other persons who have filed a claim of lien on the accounts receivable of the food processor or who have filed a financing statement under ORS chapter 79 that perfects a security interest in the accounts receivable of the food processor.] all or part of the same inventory, proceeds or accounts receivable. The notice to [other lien claimants and secured parties shall] those persons must provide the same information contained in the [statement] notice of lien required by subsection (2) of this section and [shall] be sent by certified mail, return receipt requested.

(4) [If] The agricultural producer must send notice to other persons as required by subsection (3) of this section [is not given.] 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 [by] under ORS 87.705 [is] becomes subordinate[, with respect to a person not notified, to:]

[(a) A lien that has attached to the agricultural produce, inventory or accounts receivable prior to the date on which the lien created under ORS 87.705 attaches; or]

[(b) A] to that person's perfected security interest in the agricultural produce, [inventory] proceeds or accounts receivable of the purchaser.

(5) For purposes of this section, final payment [from a food processor or Christmas tree dealer] to the agricultural producer for agricultural produce is due:

(a) On the date specified for payment in the contract between the [food processor or Christmas tree dealer] purchaser and the [agricultural] producer; or

(b) If there is no contract or no date of payment is specified in the contract, two business days after the [food processor or Christmas tree dealer] purchaser takes delivery of the [agricultural] 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 13. ORS 87.715 is amended to read:

87.715. Except for tax liens, and except as provided in ORS 87.146 (1)(c) and 87.710 (4), the class of lien created by ORS 87.705 is prior and superior to all other classes of [liens created by chattel mortgage, bill of sale, conditional contract] lien or any classes of security interest [upon agricultural produce] in the inventory, proceeds or accounts receivable of a purchaser, without regard to whether [such] those other liens or security [interest] interests attached to the [produce] inventory, proceeds or accounts receivable before or after [the date on which] a lien created by ORS 87.705 attaches. Except as provided in ORS 87.710 (4), all liens of the class created under ORS 87.705, 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. This section does not prohibit an unequal pro rata recovery between agricultural producers supplying meat animals and other agricultural producers if the inequality results from a lien on accounts receivable created under ORS 87.705.

SECTION 14. ORS 87.730 is amended to read:

87.730. A lien created under ORS 87.705 expires unless suit to foreclose the lien is brought in an appropriate court [within six months after claim of lien is filed under ORS 87.710, or if a credit is given, then within six months after the expiration of such credit, a lien created by ORS 87.705 shall cease to exist.] no later than the 45th day after the date final payment to the agricultural producer is originally due or, if the producer extends the lien by filing a notice of lien under ORS 87.710, no later than the 225th day after the date final payment to the producer is originally due.

SECTION 15. ORS 87.735 is amended to read:

87.735. (1) When an agricultural producer receives full payment for agricultural produce, [from the food processor or Christmas tree dealer to which such agricultural produce is delivered,] if the [agricultural] producer has filed [a claim of lien on such agricultural produce under ORS 87.705 and 87.710] a notice under ORS 87.710 (2) to extend a lien or under ORS 87.725 to foreclose a lien, the [agricultural] producer shall file with the [recording officer of the county in which the claim of lien is recorded] Secretary of State a certificate declaring that full payment has been received from the [food processor or Christmas tree dealer] purchaser and that the [claim of] lien is discharged.

(2) Upon receiving the certificate, the [recording officer] Secretary of State shall enter [it in full length] the certificate in the [book kept to record such liens] index maintained by the secretary for filing financing statements pursuant to ORS chapter 79.

(3) If [any] an agricultural producer[, after] that receives full payment for agricultural produce[, within 10 days after being requested thereto,] fails to [discharge the claim of lien,] file the

certificate described in subsection (1) of this section on or before the 10th day after receiving a request for filing from a purchaser, the [agricultural] producer is liable to the [food processor or Christmas tree dealer] purchaser in the sum of \$100 damages and for all actual damages caused by [such] the failure, to be recovered in an action at law.

SECTION 16. ORS 87.740 is amended to read:

87.740. [The] **A lien created by ORS 87.226 [shall not] ceases to attach to a crop [or the proceeds of the sale of a crop] that is agricultural produce as defined in ORS 87.700 and is in the possession of a [food processor or Christmas tree dealer] purchaser, or to the proceeds of the sale of the crop to a third party, if the [food processor or Christmas tree dealer] purchaser pays the agricultural producer in full for [such] the crop and the claim for [such] the lien is not filed under ORS 87.242 prior to the date of [such] that payment.**

SECTION 17. ORS 87.750 is amended to read:

87.750. As used in ORS 87.750 to 87.777, unless the context otherwise requires:

(1) "Agricultural producer" means a person [who grows or raises grain] **that engages in or has engaged in the business of growing or producing grain for market or for delivery or transfer to others owning or holding title to the grain. "Agricultural producer" includes a landowner, producer, landlord, tenant, sharecropper or other person who participates in the growing of grain and receives a share of the grain.**

(2) "Grain" means wheat, **seed corn, corn used for animal feed,** oats, barley, rye, flaxseed, certified alfalfa seed, agricultural seed as defined in ORS 633.511 (1), vegetable seed as defined in ORS 633.511, the seed of any cereal grain, soybeans, grain sorghum, dry beans and **dry** peas and any other grain for which standards are established [by the state or the federal government] **or followed by the State Department of Agriculture.**

(3) "Inventory" means **all grain purchased or received from agricultural producers, whether in bulk lots or in blended or packaged form. "Inventory" does not include the equipment or supplies of the person holding or owning the grain.**

[3] (4) "Person" means individual, corporation, partnership, association, joint stock company, business trust [or], **limited liability company, limited liability partnership, cooperative, government entity, unincorporated organization or other business entity.**

SECTION 18. ORS 87.755 is amended to read:

87.755. (1) [When] An agricultural producer [sells] **that delivers or transfers grain[, the agricultural producer shall have] for consideration has a lien on the [grain] inventory of the purchaser and [the] proceeds [thereof for a period not to exceed 90 days from the date the lien attaches.] received by the purchaser from the selling of the inventory.**

(2) The lien created by subsection (1) of this section [shall attach] **attaches to the [grain] inventory and [to the] proceeds [thereof] on the date [the agricultural producer sells] physical possession of the grain is delivered or transferred by the agricultural producer to the purchaser [or on the date the agricultural producer physically delivers the grain to the purchaser, whichever last occurs.] 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 [shall be preferred to any] is prior and superior to all other classes of lien or any classes of security interest [in favor of any creditor of the purchaser] in the inventory or proceeds, regardless of whether the creditor's lien or security interest attached to the [grain or] inventory or proceeds before or after [the date on which] 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 *[of the lien]* in order to perfect the lien. **The agricultural producer must file a notice of lien as provided under ORS 87.762 to extend the lien beyond the normal expiration date.**

(5) The lien created by subsection (1) of this section *[shall be]* **is** subject to the provisions of ORS 79.3070 (1).

(6) The lien created by subsection (1) of this section is discharged, *except as to the proceeds therefrom, upon sale of the grain by the purchaser* **with regard to inventory that is sold by the purchaser or an agent of the purchaser** to a third party *[purchaser]*. **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 87.762 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 87.762 if the purchaser is an association of which the agricultural producer is a member.**

SECTION 19. ORS 87.762 is amended to read:

87.762. *[(1) At any time within 90 days following the date on which the lien provided for in ORS 87.755 (1) attaches, the agricultural producer may extend the duration of the lien by completing all of the following within that 90-day period:]*

(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. If the agricultural producer extends the lien, the lien expires no later than 18 months after the date the lien attaches.

[(a) Filing with the Secretary of State a written statement, verified by the oath of the agricultural producer, and containing:]

(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. The notice must be supported by affidavit and contain:

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

[(B)] **(b)** The name of the person *[who]* **that** purchased the grain from the *[agricultural]* producer;

[(C)] **(c)** A description *[sufficient for identification]* of the grain *[charged with]* **delivered or transferred by the producer sufficient to identify the basis for** the lien;

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

[(E)] **(e)** The date *[on which]* payment **to the producer** was **originally** due *[to the agricultural producer for the grain charged with the lien]*; and

[(F)] **(f)** Such other information as the Secretary of State may require.

[(b) Sending, by certified mail, return receipt requested, a copy of the notice described in paragraph (a) of this subsection to all other persons who have filed a claim of lien on the inventory or accounts receivable of the purchaser of the grain or who have filed a financing statement under ORS chapter 79 perfecting a security interest in the inventory or accounts receivable of the purchaser.]

[(2) If the agricultural producer complies with all of the provisions of subsection (1) of this section, the lien of the agricultural producer shall not expire at the end of 90 days following the date of its attachment but shall continue without interruption to be effective and shall continue to be accorded the priority established under ORS 87.755 (3), until six months after the date it attached under ORS 87.755 (2).]

(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 in-

formation 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 20. ORS 87.767 is amended to read:

87.767. (1) Notices filed with the Secretary of State under ORS 87.750 to 87.777 [shall:]

[a)] **must** be in a form prescribed by the Secretary of State. [; and]

[b) *Be maintained*] **The Secretary of State shall include the notice of lien that is filed under ORS 87.762 (2) in the index maintained by the secretary for filing financing statements pursuant to ORS chapter 79. The Secretary of State shall maintain the notices as public records for a period of time established by the secretary [of State].**

(2) **The Secretary of State shall establish fees pursuant to ORS 177.130** for filing notices and requests for copies of notices [shall be established by the Secretary of State pursuant to ORS 177.130]. Fees [described in] **established pursuant to** this subsection [shall be] **are nonrefundable.**

SECTION 21. ORS 87.772 is amended to read:

87.772. (1) [The] **A** lien created [by] **under** ORS 87.755 (1) [shall cease to exist] **expires** unless suit to foreclose the lien is brought in an appropriate court[:]

[a) *Within 90 days after the date the lien attached under ORS 87.755 (2) if the lien has not been extended by filing and giving notice under ORS 87.762; or*

[b) *Within six months after the date the lien attached under ORS 87.755 (2) if the lien has been extended by filing and giving notice under ORS 87.762.*] **no later than the 180th day after the date that the lien attaches, or if the agricultural producer extends the lien by filing a notice of lien under ORS 87.762, no later than 18 months after the date the lien attaches.**

(2) Regardless of whether the lien created [by] **under** ORS 87.755 (1) has been extended by filing and giving notice under ORS 87.762, the lien shall be foreclosed in the manner provided by law for the foreclosure of liens generally.

(3) In all suits under ORS 87.750 to 87.777, the court shall, upon entering judgment for the plaintiff, allow as a part of the costs all moneys paid for the filing and recording of the lien and a reasonable amount for attorney fees.

SECTION 22. ORS 87.777 is amended to read:

87.777. (1) If an agricultural producer [filed a claim] **files a notice** of lien under ORS 87.762, when the [agricultural] producer receives full payment for the grain, the [agricultural] producer shall file with the Secretary of State a certificate declaring that full payment has been received and that the [claim of] lien is discharged.

(2) Upon receiving the certificate, the Secretary of State shall enter it in the [book kept to record such liens] **index maintained by the secretary for filing financing statements pursuant to ORS chapter 79.**

(3) If [any] **an** agricultural producer[, after] **that receives** full payment for grain[, within 10 days after being requested thereto] fails to [discharge the claim of lien] **file a certificate described in this section on or before the 10th day after receiving a request for filing from a purchaser**, the [agricultural] producer is liable to the purchaser of the grain in the sum of \$100 damages and for all actual damages caused by [such] **the** failure, to be recovered in an action at law.

SECTION 23. ORS 205.246 is amended to read:

205.246. (1) The county clerk shall record the following instruments required or permitted by law to be recorded and entered in the office of the county clerk:

- (a) Fixture filings recorded in the office of the county clerk under ORS 79.3130 (1)(b);
- (b) Hospital and physician liens recorded under ORS 87.565;
- (c) Federal tax liens and certificates and notices affecting federal tax liens recorded under ORS 87.806;
- (d) Cooperative contracts recorded under ORS 62.360;
- (e) Special district assessments attaching to real property;
- (f) Lien foreclosure statements recorded under ORS 87.202;
- (g) A certified copy of the judgment or a lien record abstract or other liens affecting the title to real property;
- (h) Building code exemptions required under ORS 455.320 and 455.345;
- (i) Construction liens recorded under ORS 87.050;
- (j) Liens upon chattels recorded under ORS 87.246;
- (k) Liens on real property recorded under ORS 87.372;
- (L) Employee benefit plan liens recorded under ORS 87.860;
- (m) Attorney liens recorded under ORS 87.455 and 87.460;
- (n) Long term care liens recorded under ORS 87.517;
- (o) Ambulance services liens recorded under ORS 87.623;
- [(p) Agricultural producers liens recorded under ORS 87.720;]*
- [(q)] (p) Community property records recorded under ORS 108.530;*
- [(r)] (q) Sheriff transfer of records recorded under ORS 206.100;*
- [(s)] (r) Corrected instruments required under ORS 205.244;*
- [(t)] (s) Mineral and mining records required under ORS 517.030, 517.052, 517.160, 517.180, 517.210, 517.220, 517.280, 517.310 and 517.320;*
- [(u)] (t) Copies of records certified by a county clerk or court clerk;*
- [(v)] (u) Subdivision and partition plats recorded under ORS 92.140;*
- [(w)] (v) Authority to solemnize marriage recorded under ORS 106.120; and*
- [(x)] (w) Condominiums recorded under ORS chapter 100.*

(2) The county clerk shall charge and collect fees specified in ORS 205.320, 205.327 and 205.350 for recording any instrument required to be recorded under subsection (1) of this section.

(3) Indexes may be maintained for instruments recorded under subsection (1) of this section in the same manner as provided in ORS 205.160.

SECTION 24. ORS 596.371 is amended to read:

596.371. (1) Whenever the owner or person having control of livestock receives notice from the State Department of Agriculture that the livestock must be treated for disease, the owner or person having control shall, within the time prescribed in the notice, cause the livestock to be treated in the manner prescribed by the department.

(2) If any person fails to comply with the notice, the department may cause the livestock to be treated and, where necessary to carry out the treatment, cause its removal to a more convenient location.

(3) No person shall fail to treat livestock owned or controlled by the person in the manner prescribed by rule of the department.

(4) The department shall have a lien on any livestock treated under this section for the value of the labor, materials, medicines or services furnished in connection with the treatment. The lien shall be perfected and enforced as provided in ORS 87.216 to 87.346, except that:

(a) The **department shall file a written notice of claim of lien as** provided in ORS 87.242 *[shall be filed]* **with the Secretary of State** within 30 days from the date of furnishing the labor, materials, medicines or services. **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.**

(b) The lien created by this subsection shall have priority over all other liens upon such livestock, except tax liens.

(5) The department shall not charge as an item of expense in connection with such treatment for any services rendered by an assistant state veterinarian or the State Veterinarian relative thereto, nor shall the department have a lien for such services upon any livestock as provided in this section.

SECTION 25. ORS 87.720 is repealed.

SECTION 26. (1) Except as provided in subsection (3) of this section, sections 2 to 4 of this 2001 Act and the amendments to Oregon Revised Statutes by sections 5 to 24 of this 2001 Act apply to liens:

(a) Arising out of the performance of labor, delivery of materials or provision of services on or after the effective date of this 2001 Act to aid the growing and harvesting of crops or the raising of animals;

(b) Attaching to agricultural produce or grain that is physically delivered or transferred to a purchaser or an agent of a purchaser on or after the effective date of this 2001 Act; or

(c) Attaching to grain that is delivered or transferred to a person other than the purchaser for cleaning and storage that is both sold and physically delivered to the purchaser on or after the effective date of this 2001 Act.

(2) Notwithstanding the amendments to ORS 87.715 by section 13 of this 2001 Act and the repeal of ORS 87.720 by section 25 of this 2001 Act, subject to differences in subordination under ORS 87.710 (1999 Edition) and ORS 87.710 as amended by section 12 of this 2001 Act, an unexpired lien perfected under ORS 87.710 (1999 Edition) prior to the effective date of this 2001 Act, or under subsection (3) of this section prior to January 1, 2002, is equal in priority to a lien perfected under ORS 87.710 as amended by section 12 of this 2001 Act.

(3) Notwithstanding section 3 of this 2001 Act and the amendments to ORS 87.710 and 87.735 by sections 12 and 15 of this 2001 Act:

(a) An agricultural producer filing a notice of lien under ORS 87.710 after the effective date of this 2001 Act and prior to January 1, 2002, shall file the notice of lien with the recording officer of the county where the agricultural produce is processed or, if the produce consists of Christmas trees, where the produce is grown. The notice of lien shall contain the information described in ORS 87.710 (2)(a) to (d) as amended by section 12 of this 2001 Act. Except as specified in this subsection, the lien shall comply with the requirements for perfecting a lien under ORS 87.710 as amended by section 12 of this 2001 Act.

(b) An agricultural producer who files a notice of lien under ORS 87.710 prior to January 1, 2002, shall file any certificate under ORS 87.735 declaring payment of the lien with the recording officer of the county where the notice of lien was filed.

(c) The Secretary of State may not, prior to January 1, 2002, accept a notice of lien pursuant to ORS 87.710 for filing.

(d) The secretary is not required to supply a list of persons as described in section 3 of this 2001 Act to a person who has a lien created under ORS 87.226, 87.705 or 87.755, if notice of the lien is filed prior to January 1, 2002.

SECTION 27. This 2001 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2001 Act takes effect on its passage.

Passed by House February 15, 2001

Repassed by House May 17, 2001

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Chief Clerk of House

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Speaker of House

Passed by Senate May 15, 2001

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President of Senate

Received by Governor:

.....M,....., 2001

Approved:

.....M,....., 2001

.....
Governor

Filed in Office of Secretary of State:

.....M,....., 2001

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Secretary of State