

House Bill 3080

Sponsored by Representative P SMITH (at the request of Oregon Small Woodlands Association)

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 **as introduced**.

Replaces existing provisions for lien on cut timbers with priority lien in inventory and sales proceeds of purchaser. Specifies priority and duration of lien. Terminates lien against cutter of timber upon creation of lien against purchaser.

A BILL FOR AN ACT

1
2 Relating to lien interests of timber producers; creating new provisions; and amending ORS 87.222.

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

4 **SECTION 1. As used in sections 1 to 7 of this 2005 Act, unless the context otherwise re-**
5 **quires:**

6 (1) **"Forest products" means logs, poles, piles or other merchantable forms of harvested**
7 **timber and products processed from harvested timber.**

8 (2) **"Harvested" means cut, severed or removed for purposes of sale or use.**

9 (3) **"Purchaser" means a person who is engaged in the business of processing forest**
10 **products and who accepts physical possession of forest products for the purpose of process-**
11 **ing or reselling forest products.**

12 (4) **"Security interest" has the meaning given that term in ORS 71.2010.**

13 (5) **"Timber" means trees that are of harvestable size and commercially grown to be**
14 **processed into wood products.**

15 (6) **"Timber producer" means the owner supplying timber for harvesting by the owner**
16 **or the purchaser, or by a contract logger or other agent of the owner or purchaser.**

17 **SECTION 2. (1) A timber producer has a lien for the contract price of forest products**
18 **transferred from the timber producer to the purchaser, or for the reasonable value of the**
19 **forest products if there is no contract price. The lien created by this section attaches to all**
20 **forest products in the possession of the purchaser, regardless of source, and to all other in-**
21 **ventory of the purchaser. The lien also attaches to proceeds received by the purchaser from**
22 **selling forest products or other inventory. The lien on the forest products, other inventory**
23 **and sales proceeds attaches on the date the purchaser or an agent of the purchaser first**
24 **accepts physical possession of the forest products that are the basis for the lien.**

25 (2) **A timber producer that claims a lien under subsection (1) of this section need not file**
26 **any notice in order to perfect the lien. The timber producer must file a notice of lien as**
27 **provided in section 3 of this 2005 Act to extend the lien beyond the normal expiration date.**

28 (3) **The lien created by this section is subject to ORS 79.0320 (1).**

29 (4) **An agreement by a timber producer purporting to waive the right to file a notice of**
30 **lien under section 3 of this 2005 Act is void as contrary to public policy.**

31 **SECTION 3. (1) A lien created under section 2 of this 2005 Act expires no later than the**

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 end of the 45th day after the date that the final payment to the timber producer is originally
 2 due, unless the timber producer extends the lien as provided in subsection (2) of this section.
 3 If the timber producer extends the lien, the lien expires no later than the 225th day after the
 4 date that the final payment to the timber producer is originally due.

5 (2) A timber producer may extend a lien created under section 2 of this 2005 Act by filing
 6 a notice of lien with the Secretary of State. The timber producer may file the notice only
 7 during the period after the date that payment for the forest products is originally due and
 8 no later than the 45th day after the date that the final payment for the forest products is
 9 due. The notice must be supported by affidavit and contain:

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

12 (b) The name of the purchaser to be charged with the lien;

13 (c) A description of the transferred forest products that is sufficient to identify the basis
 14 for the lien;

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

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

18 (f) Any other information required by the Secretary of State by rule.

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

25 (4) The timber producer must send notice to other persons as required by subsection (3)
 26 of this section no later than the 20th day after filing the notice of lien. If the timber producer
 27 does not send a person notice within the required time, the lien created under section 2 of
 28 this 2005 Act becomes subordinate to that person's perfected security interest in the forest
 29 products, inventory and sale proceeds.

30 (5) For purposes of this section and section 5 of this 2005 Act, final payment to the tim-
 31 ber producer for forest products is due:

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

34 (b) If there is no contract between the purchaser and the timber producer or no date of
 35 payment is specified in the contract, two business days after the purchaser takes physical
 36 possession of the forest products.

37 (6) Notwithstanding ORS 174.120, for purposes of this section and section 5 of this 2005
 38 Act, if the last day of the period for performing an act is a Saturday, or a legal holiday as
 39 specified in ORS 187.010 and 187.020, the period runs until the end of the next day that is not
 40 a Saturday or legal holiday.

41 **SECTION 4.** Except for tax liens, and except as provided in ORS 87.146 (1)(c) and section
 42 3 (4) of this 2005 Act, the class of lien created by section 2 of this 2005 Act is prior and su-
 43 perior to all other classes of lien or any classes of security interest in the forest products,
 44 inventory or sale proceeds of a purchaser, without regard to whether those other liens or
 45 security interests attached to the forest products, inventory or sale proceeds before or after

1 a lien created by section 2 of this 2005 Act attaches. All liens of the class created under
2 section 2 of this 2005 Act, regardless of the date of attachment or the date of notice of lien,
3 are of equal priority and payable pro rata in proportion to the size of each lien.

4 **SECTION 5.** (1) A lien created under section 2 of this 2005 Act expires unless suit to
5 foreclose the lien is brought in an appropriate court no later than the 45th day after the date
6 final payment to the timber producer is originally due or, if the timber producer extends the
7 lien by filing a notice of lien under section 3 of this 2005 Act, no later than the 225th day
8 after the date final payment to the timber producer is originally due.

9 (2) In all suits under this section the court shall, upon entering judgment for the
10 plaintiff, allow as a part of the costs all moneys paid for the filing and recording of the lien,
11 and a reasonable amount for attorney fees at trial and on appeal.

12 **SECTION 6.** (1) When a timber producer receives full payment for forest products, if the
13 timber producer has filed a notice under section 3 (2) of this 2005 Act to extend a lien or an
14 action under section 5 of this 2005 Act to foreclose a lien, the timber producer shall file with
15 the Secretary of State a certificate declaring that full payment has been received from the
16 purchaser and that the lien is discharged.

17 (2) Upon receiving the certificate, the Secretary of State shall enter the certificate in the
18 index maintained by the secretary for filing financing statements pursuant to ORS chapter
19 79.

20 (3) If a timber producer that receives full payment for forest products fails to file the
21 certificate described in subsection (1) of this section on or before the 10th day after receiving
22 a request for filing from a purchaser, the producer is liable to the purchaser in the sum of
23 \$100 damages and for all actual damages caused by the failure, to be recovered in an action
24 at law.

25 **SECTION 7.** (1) Notices filed with the Secretary of State under section 3 of this 2005 Act
26 and certificates filed with the secretary under section 6 of this 2005 Act must be in a form
27 prescribed by the secretary. The secretary shall include the notices and certificates in the
28 index maintained by the secretary for filing financing statements pursuant to ORS chapter
29 79. The secretary shall maintain the notices and certificates as public records for a period
30 of time established by the secretary.

31 (2) The Secretary of State shall establish fees pursuant to ORS 177.130 for filing notices
32 and certificates described in this section and for furnishing copies of those notices or cer-
33 tificates. Fees established pursuant to this subsection are nonrefundable.

34 **SECTION 8.** ORS 87.222 is amended to read:

35 87.222. (1) A person who performs labor on or assists in obtaining, handling, manufacturing or
36 transporting timbers or wood products has a lien upon those timbers and those wood products for
37 the reasonable or agreed value for this labor or services, when the labor is performed or services
38 provided at the request of the owner of the timbers or wood products or an agent of the owner.

39 (2) A person who permits another to go on the land of the person and obtain timbers, has a lien
40 upon the timbers[,] cut, for the reasonable or agreed charge for that permission and stumpage.
41 **However, if the timbers cut provide the person with a lien under section 2 of this 2005 Act,**
42 **the lien created under this subsection shall terminate upon creation of the person's lien**
43 **under section 2 of this 2005 Act.**

44 *[(3) Subject to the limitation in subsection (4) of this section, if a person cuts or hires another to*
45 *cut timbers on the land of the person and delivers or hires another to deliver the timbers to a pur-*

1 *chaser, the person has a lien upon the timbers for the lesser of:]*

2 *[(a) The reasonable or agreed value of the timbers; or]*

3 *[(b) \$125,000.]*

4 *[(4) A person described in subsection (3) of this section may not have outstanding at any one time*
5 *more than one lien arising under subsection (3) of this section.]*

6 **SECTION 9. Sections 1 to 7 of this 2005 Act and the amendments to ORS 87.222 by section**
7 **8 of this 2005 Act apply to forest products transferred to a purchaser on or after the effective**
8 **date of this 2005 Act.**

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