

CHAPTER 6

AN ACT SB 1000
[2002 First Special Session]

Relating to construction liens; creating new provisions; amending ORS 87.021 and 701.250; repealing ORS 93.125; and declaring an emergency.

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

SECTION 1. ORS 87.021 is amended to read:

87.021. (1) Except when material, equipment, services or labor described in ORS 87.010 (1) to (3), (5) and (6) is furnished at the request of *[an] the owner [who is not the original contractor]*, a person furnishing any materials, equipment, services or labor described in ORS 87.010 (1) to (3), (5) and (6) for which a lien may be perfected under ORS 87.035 shall give a notice of right to a lien to the owner of the site. The notice of right to a lien may be given at any time during the progress of the improvement, but the notice only protects the right to perfect a lien for materials, equipment and labor or services provided after a date which is eight days, not including Saturdays, Sundays and other holidays as defined in ORS 187.010, before the notice is delivered or mailed. However, no lien is created under ORS 87.010 (5) or (6) for any services provided for an owner-occupied residence at the request of an agent of the owner.

(2) The notice required by subsection (1) of this section shall be substantially in the form set forth in ORS 87.023.

(3)(a) Except as provided in paragraph (b) of this subsection, a lien created under ORS 87.010 (1) to (3), (5) or (6) may be perfected under ORS 87.035 only to the extent that the notice required by subsection (1) of this section is given.

(b) A person who performs labor upon a commercial improvement or provides labor and material for a commercial improvement or who rents equipment used in the construction of a commercial improvement need not give the notice required by subsection (1) of this section in order to perfect a lien created under ORS 87.010. As used in this paragraph:

(A) "Commercial improvement" means any structure or building not used or intended to be used as a residential building, or other improvements to a site on which such a structure or building is to be located.

(B) "Residential building" means a building or structure that is or will be occupied by the owner as a residence and that contains not more than four units capable of being used as residences or homes.

(4) Unless otherwise agreed or the lien claimant who is required to give the notice under subsection (1) of this section is in privity with the original contractor, when a provision in an agreement for the construction of a commercial improvement requires the original contractor to hold an owner harmless or to indemnify an owner for a lien created under

ORS 87.010 and perfected under ORS 87.035, that provision is not enforceable as to any lien which requires that a notice under this section be given to the owner unless a copy of the notice is delivered pursuant to ORS 87.018 to the original contractor not later than 10 days after its receipt by the owner.

SECTION 2. ORS 701.250 is amended to read:

701.250. (1) Any individual may request and the Construction Contractors Board shall provide notification of the status of one or more licensees. Status information provided by the board shall include any professional credentials earned by the contractor as described in ORS 701.120.

(2) The board may charge a standard fee for the notification described in subsection (1) of this section not to exceed the cost of preparation and provision of such notices.

[(3) An individual may request and the board shall provide the individual with a cautionary notice required by ORS 93.125 that shall inform a purchaser that under certain circumstances a mortgagee or lienholder may encumber or claim a lien upon real property after a sale to the purchaser for a transaction or activity that occurred before the sale.]

SECTION 3. ORS 93.125 is repealed.

SECTION 4. ORS 87.021, as amended by section 1 of this 2002 Act, is amended to read:

87.021. (1) Except when material, equipment, services or labor described in ORS 87.010 (1) to (3), (5) and (6) is furnished at the request of *[the] an owner who is not the original contractor*, a person furnishing any materials, equipment, services or labor described in ORS 87.010 (1) to (3), (5) and (6) for which a lien may be perfected under ORS 87.035 shall give a notice of right to a lien to the owner of the site. The notice of right to a lien may be given at any time during the progress of the improvement, but the notice only protects the right to perfect a lien for materials, equipment and labor or services provided after a date which is eight days, not including Saturdays, Sundays and other holidays as defined in ORS 187.010, before the notice is delivered or mailed. However, no lien is created under ORS 87.010 (5) or (6) for any services provided for an owner-occupied residence at the request of an agent of the owner.

(2) The notice required by subsection (1) of this section shall be substantially in the form set forth in ORS 87.023.

(3)(a) Except as provided in paragraph (b) of this subsection, a lien created under ORS 87.010 (1) to (3), (5) or (6) may be perfected under ORS 87.035 only to the extent that the notice required by subsection (1) of this section is given.

(b) A person who performs labor upon a commercial improvement or provides labor and material for a commercial improvement or who rents equipment used in the construction of a commercial improvement need not give the notice required by subsection (1) of this section in order to perfect a

lien created under ORS 87.010. As used in this paragraph:

(A) "Commercial improvement" means any structure or building not used or intended to be used as a residential building, or other improvements to a site on which such a structure or building is to be located.

(B) "Residential building" means a building or structure that is or will be occupied by the owner as a residence and that contains not more than four units capable of being used as residences or homes.

(4) Unless otherwise agreed or the lien claimant who is required to give the notice under subsection (1) of this section is in privity with the original contractor, when a provision in an agreement for the construction of a commercial improvement requires the original contractor to hold an owner harmless or to indemnify an owner for a lien created under ORS 87.010 and perfected under ORS 87.035, that provision is not enforceable as to any lien which requires that a notice under this section be given to the owner unless a copy of the notice is delivered pursuant to ORS 87.018 to the original contractor not later than 10 days after its receipt by the owner.

SECTION 5. Section 6 of this 2002 Act is added to and made a part of ORS chapter 93.

SECTION 6. (1) If an owner of record sells real property to a purchaser, the owner shall provide to the purchaser:

(a) A list of all persons described in ORS 87.010 (1), (2), (5) or (6) with whom the owner has entered into a contract within the previous two years if the owner has not fully paid the person or the person disputes that full payment was made;

(b) A copy of a notice of right to a lien, claim of lien, pleadings to a foreclosure action, satisfaction of lien or waiver or release of a right to a lien received by the owner within the past two years; and

(c) A cautionary notice described in ORS 701.250 (3) that is provided by the Construction Contractors Board.

(2) An owner who violates subsection (1) of this section commits a Class B misdemeanor.

SECTION 7. ORS 701.250, as amended by section 2 of this 2002 Act, is amended to read:

701.250. (1) Any individual may request and the Construction Contractors Board shall provide notification of the status of one or more licensees. Status information provided by the board shall include any professional credentials earned by the contractor as described in ORS 701.120.

(2) The board may charge a standard fee for the notification described in subsection (1) of this section not to exceed the cost of preparation and provision of such notices.

(3) An individual may request and the board shall provide the individual with a cautionary notice required by section 6 of this 2002 Act that

informs a purchaser that under certain circumstances a mortgagee or lienholder may encumber or claim a lien upon real property after a sale to the purchaser for a transaction or activity that occurred before the sale.

SECTION 8. Sections 5 and 6 of this 2002 Act and the amendments to ORS 87.021 and 701.250 by sections 4 and 7 of this 2002 Act become operative on January 1, 2004.

SECTION 9. (1) The repeal of ORS 93.125 by section 3 of this 2002 Act is intended to relieve a person of any obligation with respect to a criminal sentence imposed or criminal action accruing under ORS 93.125 during the period beginning on the effective date of ORS 93.125 and ending on the effective date of this 2002 Act.

(2) A person may not be held civilly liable for any violation of ORS 93.125 (2001 Edition). A person may not be subjected to any administrative discipline by reason of a violation of ORS 93.125 (2001 Edition). A court or agency conducting a proceeding on the effective date of this 2002 Act based on a violation of ORS 93.125 (2001 Edition) shall dismiss the proceeding to the extent the proceeding is based on a violation of ORS 93.125 (2001 Edition).

(3) Notwithstanding ORS 161.035 (4), ORS 93.125 (2001 Edition) does not remain in force for the purposes of authorizing the accusation, prosecution, conviction and punishment of a person who violated ORS 93.125 (2001 Edition) before the effective date of this 2002 Act.

(4) A person arrested for, or convicted of, violating ORS 93.125 (2001 Edition) before the effective date of this 2002 Act may apply to have the record of the arrest or the conviction set aside. The person must apply to the appropriate court as identified in ORS 137.225 (1)(a) or (b). Upon receipt of an application under this section, the court shall enter an appropriate order which shall state any arrest charge and conviction charge, the date of any charge, the submitting agency and the disposition. The order shall also state that positive identification of the applicant has been established by the Department of State Police Bureau of Criminal Identification and shall identify the applicant by state bureau number or submitting agency number. The order shall seal the record of conviction and other official records in the case, including the records of arrest whether or not the arrest resulted in a further criminal proceeding. The clerk of the court shall forward a certified copy of the order to any agency specified by the court. A certified copy of the order must be sent to the Department of Corrections when the applicant has been in the custody of the Department of Corrections. Upon the entry of the order, the conviction, arrest or other proceeding shall be considered not to have occurred. The applicant, for purposes of ORS

93.125 (2001 Edition) or any other law, shall be considered not to have been previously convicted or arrested, as the case may be.

SECTION 10. This 2002 Act being necessary for the immediate preservation of the public

peace, health and safety, an emergency is declared to exist, and this 2002 Act takes effect on its passage.

Approved by the Governor February 25, 2002

Filed in the office of Secretary of State February 25, 2002

Effective date February 25, 2002