

1 ENGROSSED

2 COMMITTEE SUBSTITUTE

3 FOR

4 **H. B. 4347**

5 (By Delegates Shott, Sponaugle, Sobonya,  
6 Manchin, Lane, Poore and Pino)  
7

8 (Originating in the Committee on the Judiciary)

9 [February 12, 2014]

10

11 A BILL to amend and reenact §38-2-21 and §38-2-34 of the Code of  
12 West Virginia, 1931, as amended, relating to creating an  
13 affirmative defense to an action to enforce a lien.

14 *Be it enacted by the Legislature of West Virginia:*

15 That §38-2-21 and §38-2-34 of the Code of West Virginia, 1931,  
16 as amended, be amended and reenacted, all to read as follows:

17 **ARTICLE 2. MECHANICS' LIENS.**

18 **§38-2-21. Effect of payment by owner to contractor or**  
19 **subcontractor.**

20 (a) No payment by the owner to any contractor or subcontractor  
21 of any part or all of the contract price for the erection and  
22 construction of any ~~such a~~ building, structure or improvement  
23 ~~appurtenant thereto~~ to a building, structure or improvement or for  
24 any part or section of ~~such a~~ work ~~shall~~ may affect, impair or  
25 limit the lien of the subcontractor, laborer, or materialman or

1 furnisher of machinery or other necessary material or equipment, as  
2 provided ~~for~~ in this article, except as otherwise provided in this  
3 article.

4 (b) Notwithstanding any provisions of this code to the  
5 contrary, it is an affirmative defense, or an affirmative partial  
6 defense, as the case may be, in any action to enforce a lien  
7 pursuant to this article that the owner is not indebted to the  
8 contractor or is indebted to the contractor for less than the  
9 amount of the lien sought to be perfected, when:

10 (1) The property is an existing single-family dwelling;

11 (2) The property is a residence constructed by the owner or  
12 under a contract entered into by the owner prior to its occupancy  
13 as the owner's primary residence; or

14 (3) The property is a single-family, owner-occupied dwelling,  
15 including a residence constructed and sold for occupancy as a  
16 primary residence. This subdivision does not apply to a developer  
17 or builder of multiple residences except for the residence that is  
18 occupied as the primary residence of the developer or builder.

19 **§38-2-34. Time within which suit to enforce lien may be brought;**  
20 **right of other lienors to intervene.**

21 (a) Unless a ~~suit in chancery~~ an action to enforce any lien  
22 authorized by this article is commenced in a circuit court within  
23 six months after the person desiring to avail himself or herself  
24 ~~thereof shall have~~ of the court has filed his or her notice in the  
25 clerk's office, as ~~hereinbefore~~ provided in this article, ~~such~~ the

1 lien shall be discharged; but ~~a suit~~ an action commenced by any  
2 person having ~~such a~~ a lien shall, for the purpose of preserving the  
3 same, inure to the benefit of all other persons having a lien under  
4 this article on the same property, and ~~such~~ persons may intervene  
5 in ~~such suit~~ the action for the purpose of enforcing their liens ~~in~~  
6 ~~the same manner as in other chancery suits.~~

7 (b) Notwithstanding any provisions of this code to the  
8 contrary, it is an affirmative defense, or an affirmative partial  
9 defense, as the case may be, in any action to enforce a lien  
10 pursuant to this article that the owner is not indebted to the  
11 contractor or is indebted to the contractor for less than the  
12 amount of the lien sought to be perfected, when:

13 (1) The property is an existing single-family dwelling;

14 (2) The property is a residence constructed by the owner or  
15 under a contract entered into by the owner prior to its occupancy  
16 as his or her primary residence; or

17 (3) The property is a single-family, owner-occupied dwelling,  
18 including a residence constructed and sold for occupancy as a  
19 primary residence. This subdivision does not apply to a developer  
20 or builder of multiple residences except for the residence that is  
21 occupied as the primary residence of the developer or builder.

22 (c) As used in subsection (b):

23 (1) 'Dwelling' or 'residence' means any building or structure  
24 intended for habitation, in whole or part, and includes, but is not  
25 limited to, any house, apartment, mobile home, house trailer,

1 modular home, factory-built home and any adjacent outbuildings.

2       (2) 'Outbuilding' means any building or structure which  
3 adjoins, is part of, belongs to, or is used in connection with a  
4 dwelling, and shall include, but not be limited to, any garage,  
5 shop, shed, barn or stable.