

1 **ENROLLED**

2 **COMMITTEE SUBSTITUTE**

3 **FOR**

4 **H. B. 4347**

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

8 [Passed March 8, 2014; in effect ninety days from passage.]  
9

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

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

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

16 **ARTICLE 2. MECHANICS' LIENS.**

17 **§38-2-21. Effect of payment by owner to contractor or**  
18 **subcontractor.**

19 (a) No payment by the owner to any contractor or subcontractor  
20 of any part or all of the contract price for the erection and  
21 construction of any a building, structure or improvement  
22 appurtenant to a building, structure or improvement or for any part  
23 or section of a work may affect, impair or limit the lien of the  
24 subcontractor, laborer, or materialman or furnisher of machinery or  
25 other necessary material or equipment, as provided in this article,

1 except as otherwise provided in this article.

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

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

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

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

17 **§38-2-34. Time within which suit to enforce lien may be brought;**

18 **right of other lienors to intervene.**

19 (a) Unless an action to enforce any lien authorized by this  
20 article is commenced in a circuit court within six months after the  
21 person desiring to avail himself or herself of the court has filed  
22 his or her notice in the clerk's office, as provided in this  
23 article, the lien shall be discharged; but an action commenced by  
24 any person having a lien shall, for the purpose of preserving the  
25 same, inure to the benefit of all other persons having a lien under

1 this article on the same property, and persons may intervene in the  
2 action for the purpose of enforcing their liens.

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

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

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

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

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

19 (1) 'Dwelling' or 'residence' means any building or structure  
20 intended for habitation, in whole or part, and includes, but is not  
21 limited to, any house, apartment, mobile home, house trailer,  
22 modular home, factory-built home and any adjacent outbuildings.

23 (2) 'Outbuilding' means any building or structure which  
24 adjoins, is part of, belongs to, or is used in connection with a  
25 dwelling, and shall include, but not be limited to, any garage,

1 shop, shed, barn or stable.