

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 4347**

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

7 (Originating in the Committee on the Judiciary)

8 [February 12, 2014]  
9

10 A BILL 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 ~~such~~ a building, structure or improvement  
22 appurtenant ~~thereto~~ to a building, structure or improvement or for  
23 any part or section of ~~such~~ a work ~~shall~~ may affect, impair or  
24 limit the lien of the subcontractor, laborer, or materialman or  
25 furnisher of machinery or other necessary material or equipment, as

1 provided ~~for~~ in this article, except as otherwise provided in this  
2 article.

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 unit;

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 the owner's primary residence; or

13 (3) The property is a single-family, owner-occupied dwelling  
14 unit, including a residence constructed and sold for occupancy as  
15 a 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 **§38-2-34. Time within which suit to enforce lien may be brought;**  
19 **right of other lienors to intervene.**

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

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

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

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

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14 under a contract entered into by the owner prior to its occupancy  
15 as his or her primary residence; or

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17 unit, including a residence constructed and sold for occupancy as  
18 a primary residence. This subdivision does not apply to a developer  
19 or builder of multiple residences except for the residence that is  
20 occupied as the primary residence of the developer or builder.