

Senate Bill No. 568

(By Senators Fitzsimmons, Unger, Yost and Kessler (Mr. President))

[Introduced February 13, 2014; referred to the Committee on the Judiciary.]

A BILL to amend and reenact §38-2-21 and §38-2-34 of the Code of West Virginia, 1931, as amended, all relating to affirmative defenses against certain liens involving residential construction projects.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. MECHANICS' LIENS.

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

(a) No payment by the owner to any contractor or subcontractor of any part or all of the contract price for the erection and construction of any ~~such~~ building, structure or improvement

1 appurtenant ~~thereto~~ to the building or structure or for any part or
2 section of ~~such the~~ work shall affect, impair or limit the lien of
3 the subcontractor, laborer, or materialman or furnisher of
4 machinery or other necessary material or equipment, as provided ~~for~~
5 in this article, except as otherwise provided in this article.

6 (b) Notwithstanding any provisions of this article to the
7 contrary, the amount for which a contractor or subcontractor may
8 perfect a lien may not exceed the amount in which the owner is
9 indebted to the general contractor at the time the notice is given,
10 or becomes indebted to the general contractor upon the contract
11 with the general contractor.

12 (c) It is an affirmative defense in any action to enforce a
13 lien of a subcontractor or supplier of laborers or materials or
14 services that the owner is not indebted to the general contractor
15 or is indebted to the general contractor for less than the amount
16 of the lien sought to be enforced when:

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

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

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

1 occupied as the primary residence of the developer or builder.

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

4 (a) Unless a suit in chancery an action to enforce any lien
 5 authorized by this article is commenced in a circuit court within
 6 six months after the person desiring to avail himself or herself
 7 ~~thereof shall have~~ of the court has filed ~~his~~ notice in the clerk's
 8 office, as ~~hereinbefore~~ provided in this article, ~~such~~ the lien
 9 ~~shall be~~ is discharged; but ~~a suit~~ an action commenced by any
 10 person having ~~such~~ that lien shall, for the purpose of preserving
 11 the same, inure to the benefit of all other persons having a lien
 12 under this article on the same property, and ~~such~~ those persons may
 13 intervene in ~~such suit~~ the action for the purpose of enforcing
 14 their liens. ~~in the same manner as in other chancery suits.~~

15 (b) In an action to enforce any lien authorized by this
 16 article, it is an affirmative defense that the owner is not
 17 indebted to the general contractor or is indebted to the general
 18 contractor for less than the amount of the lien sought to be
 19 enforced when:

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

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

24 (3) The property is a single-family, owner-occupied dwelling

1 unit, including a residence constructed and sold for occupancy as
2 a primary residence. This subdivision does not apply to a developer
3 or builder of multiple residences except for the residence that is
4 occupied as the primary residence of the developer or builder.

NOTE: The purpose of this bill is to add language to West Virginia Code providing for affirmative defenses against mechanic's liens related to residential construction projects.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.