

H. B. 2820

(By Delegates Shott, Manchin and Foster)

[Introduced February 19, 2015; 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 mechanics' liens; and providing that property owners of single family dwellings or residences are not entitled to affirmative defenses to mechanics' liens if notice is timely given of the liability for unpaid bills for work performed of materials supplied.

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; notice by subcontractor, supplier, materialman, architect, engineer, equipment providers, laborers and others; notice by building permit, effect of notice.

(a) No payment by the owner to any contractor or subcontractor of any part or all of the

1 contract price for the erection and construction of any building, structure or improvement
2 appurtenant to a building, structure or improvement or for any part or section of a work may affect,
3 impair or limit the lien of the subcontractor, laborer, or material man or furnisher of machinery or
4 other necessary material or equipment, as provided in this article, except as otherwise provided in
5 this article.

6 (b) Notwithstanding any provisions of this code to the contrary, except as otherwise stated
7 in this section, and in section thirty-four of this article, beginning on July 1, 2015, it is an affirmative
8 defense, or an affirmative partial defense, as the case may be, in any action to enforce a lien pursuant
9 to this article that the owner is not indebted to the contractor or is indebted to the contractor for less
10 than the amount of the lien sought to be perfected, when:

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

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

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

18 (c) If notice is given to the owner pursuant to subsection (d) of this section, the owner is not
19 entitled to the protections provided by this section and section thirty-four of this article.

20 (d) Subcontractors, suppliers, material men, architects, engineers, equipment providers,
21 laborers and others who wish to preserve their mechanic's lien rights pursuant to this article shall
22 give notice to the owner as follows:

1 (1) Within ten business days of the first performance of labor or services or provision of
2 equipment or materials or supplies, the subcontractor, supplier, material man, architect, engineer,
3 equipment providers, laborers and others who wish to preserve their mechanic's lien rights pursuant
4 to section one of this article shall serve notice by certified mail on the owner of the property, as
5 defined in subsection (b) above, and by posting in a conspicuous place on the job site a notice of
6 intention to preserve mechanic's lien rights. The notice shall be sufficient if it is substantially in the
7 following form, and must be prominently disclosed in uppercase bold lettering of at least 12-point
8 type and be sufficiently clear so as to be readily understandable:

9 "Please take Notice that your home and real estate are subject to a mechanic's lien for any
10 unpaid balances due to subcontractors, suppliers, material man, architects, engineers, equipment
11 providers, laborers and others. It is the owners' responsibility to see that all bills are paid. If the bills
12 are not paid, it is possible that your home may be sold to cover the bills, after the costs of applicable
13 legal proceedings."

14 Notice by one subcontractor, supplier, material man, architect, engineer, equipment provider,
15 laborers and others shall inure to the benefit of all other persons having to give notice under this
16 article on the same property, as that property is defined in subsection (b) of this section.

17 (2) Where building permits are required, the city, county or municipality that is responsible
18 for issuing building permits shall give notice in the building permit of the right of subcontractors,
19 suppliers, material man, architects, engineers, equipment providers, laborers and others to file a
20 mechanic's lien. Notice given on building permits shall include the same notice referred to in
21 subdivision (1) of this subsection, and shall require acknowledgment from the owner in the form of
22 a signed receipt: *Provided*, That if the notice is given, then this is sufficient notice to the owner and

1 subcontractors, suppliers, material man, architects, engineers, equipment providers, laborers and
2 others to preserve mechanic's lien rights.

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

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

11 (b) Notwithstanding any provisions of this code to the contrary, except as stated in this
12 section, and in section twenty-one of this article, beginning on July 1, 2015, it is an affirmative
13 defense, or an affirmative partial defense, as the case may be, in any action to enforce a lien pursuant
14 to this article that the owner is not indebted to the contractor or is indebted to the contractor for less
15 than the amount of the lien sought to be perfected, when:

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

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

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

1 (c) If notice is provided in accordance with subsections (c) and (d) of section twenty-one of
2 this article, the owner is not entitled to the protections of affirmative defenses or affirmative partial
3 defenses provided in this section and in section twenty-one of this article.

4 ~~(c)~~ (d) As used in subsection (b):

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

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

NOTE: The purpose of this bill is to add language to the West Virginia Code providing for affirmative defenses against mechanic's liens. The bill provides that property owners of single family dwellings or residences are not entitled to affirmative defenses to mechanics' liens if notice is timely given of the liability for unpaid bills for work performed of materials supplied.

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