WEST VIRGINIA CODE CHAPTER 38 ARTICLE 11

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§38-11-1. Definition of lienor.

The word "lienor" as used in this article shall mean the person claiming or asserting a lien upon personal property.

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§38-11-2. Rights of lienor in property subject to other claims; priority.

Any lienor shall take such rights as a purchaser of the property deposited with him would take, and shall take subject to other titles, interests, liens, or charges in the same manner that a purchaser would take. The lienor's rights shall be determined as of the time when the property was deposited with him except that if such lienor shall receive actual notice of such other liens or charges after he has received possession of the property, any further charges incurred by him after such notice, except such as shall be necessary for the storage or preservation of the property while holding such property for charges incurred before such notice, shall be subordinate to such other liens or charges of which he had actual notice.

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§38-11-3. Improver's, storer's or transporter's lien on personal property and animals.

A person who, while in possession thereof, makes, alters, repairs, stores, transports or in any way enhances the value of an article of personal property, or boards, pastures, feeds, trains, improves or transports any animal shall have a lien upon such article or animal while lawfully in the possession thereof, for the charges agreed upon, or, if no charges be agreed upon, then for his just and reasonable charges for the work done or the board or storage or transportation furnished, to the extent and in the manner provided for in section fourteen of this article, and may retain possession thereof until such charges are paid. Such lien shall be good against the person who deposited the property with the lienor and against any other person by whose authority or with whose consent the property was deposited: Provided, That, notwithstanding the provisions of this section and section two of this article, if a person possessing an improver's lien on a motor vehicle releases that vehicle to a secured party taking possession after default, the secured party shall, upon redemption of the vehicle by the debtor or resale or other disposition by the secured party, pay to the improver the lesser of: (i) The actual cost of improvements as measured by the cost of inventory and labor; or (ii) $1,500: Provided, however, That improvements shall not include nonstock changes in the appearance or performance of the vehicle: Provided further, That if after satisfaction of any prior perfected lien, proceeds remain from the sale, redemption or other disposition of the vehicle by the secured party, such proceeds shall be used to satisfy any balance remaining on the improver's lien: And provided further, That nothing herein shall be construed as impairing or affecting the secured party's right to recover under any insurance policy covering the vehicle. If two or more articles of personal property are made, altered, repaired, stored, transported or enhanced in value as aforesaid, or two or more animals are boarded, pastured, fed, trained, improved or transported as aforesaid, under one contract or agreement, any one or more of such articles or animals may be held under the lien, hereinbefore mentioned, for all of the charges upon all such articles included in such contract or agreement.

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§38-11-4. Lien of bailee of animals or vehicles.

A person keeping a livery stable, or boarding stable for animals, or a garage or storage place for automobiles or other vehicles, or who boards, pastures, feeds or trains animals for hire, has a lien upon such animals or vehicles for the sum due him for the care, boarding, pasturage, feeding, or training of such animals, or the care, keeping or storage of such vehicles, even though such animals or vehicles are permitted to be taken out of the possession of the one claiming such lien, if the contract between the owner and the person claiming such lien for keeping, boarding, pasturage, feeding, training or storage, has not been terminated at the time such animal or vehicle is taken out of such possession: Provided, however, That any purchaser of such animal or vehicle, while out of the possession of the person claiming such lien, shall take such property free of such lien, unless he had actual notice at the time of such purchase that such animal or vehicle was being kept, stored, boarded, pastured, fed or trained by some person other than the owner thereof: Provided further, That the lien hereinbefore provided for in this section shall not be valid as against any person other than the owner of such animal or vehicle, whether such other person have notice of the claim of lien or not, for any charges incurred more than three months prior to the time when such person other than the owner acquired his interest in the animal or chattel, unless the animal or chattel was, at the time of the acquisition of such interest, actually in the possession of the person claiming such lien.

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§38-11-5. Lien for lodging and board.

The owner or keeper of any hotel, inn, lodginghouse, restaurant, eating house or boardinghouse shall have a lien upon and, to the extent and in the manner provided for in section fourteen of this article, may retain possession of the baggage, luggage or other personal property of any kind, brought to such hotel, inn, lodginghouse, restaurant, eating house or boardinghouse by, or with the consent of, the owner thereof, for the amount of his lawful claim for lodging, board or other accommodations or facilities furnished by him at that time to such person bringing the same, or to any other person for whose charges the person so bringing such property is liable.

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§38-11-6. Lien of humane officer.

When any humane officer shall provide any neglected or abandoned animal with proper food, shelter and care, he shall have a lien upon such animal for the expense thereof, and such expense shall be charged against the owner of such animal. Until the humane officer shall take possession of the animal or place the animal in the possession of some person other than the owner, to the extent and in the manner provided for in section fourteen of this article, such lien shall not be good against a purchaser of the animal from the owner, for value, and without notice of the facts creating the lien.

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§38-11-7. Recovery of possession from owner by lienor.

When any personal property lawfully held by a creditor in his possession under a lien shall be wrongfully taken from his possession by the owner thereof, the creditor shall have the right to recover the possession thereof, from the owner or any creditor of the owner, or any other person except a purchaser of the property for value without notice of the creditor's right under his lien, in the same manner as an owner of personal property may recover the possession thereof.

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§38-11-8. Lien for service of male animals.

The owner of any stallion, jack or bull, that is duly registered under the laws of the State of West Virginia, shall have a lien upon the foal or calf thereof, whenever the service of such stallion, jack or bull was had by contract with the owner, or agent of the owner, of the dam or cow of such foal or calf, at the time of such service. Such lien shall cease unless the person desiring to avail himself thereof shall, within six months from the birth of such foal or calf, file before some magistrate in the county in which such foal or calf may be, his own affidavit, or that of some credible person, stating the amount of his lien against such foal or calf and that such amount is due by contract, also a description of the foal or calf upon which such lien is claimed. Such affidavit shall be filed and preserved by such magistrate, for which service he shall receive any fee provided by law. Upon the filing of such affidavit, such proceedings shall be had for the enforcement of such lien as are provided in section fourteen of this article.

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§38-11-9. Workman's or materialman's lien on vessel.

Any citizen of this state shall have a lien upon any domestic steamboat, steamer or vessel, propelled wholly or in part by steam, gas, fluid, naphtha, or electricity, which plies upon the navigable waters of this state, and which is registered in this state, for all work and labor done upon such vessel, and for all materials, goods, wares and merchandise furnished such vessel by any such citizen.

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§38-11-10. Lienor's right to compensation and lien for storage.

Any lienor lawfully holding personal property in his possession under a lien shall be entitled to reasonable compensation for the storage or keeping of such property, or for the expense of having it stored or kept at some other place, and for any other trouble or expense necessarily incurred in the care and preservation of such property, and the property so held shall be subject to a lien for such charges.

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§38-11-11. Assignability of liens.

Whenever any lienor shall assign to any other person the debt or claim secured by a lien, such assignee shall be entitled, unless it is otherwise expressly agreed, to take possession of the property and hold it by virtue of the lien, in the same manner as his assignor was entitled to hold it before the assignment.

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§38-11-12. Liability of lienor or pledgee for safe return of property delivered to another.

Whenever any lienor or pledgee or his assignee shall lawfully deliver the possession of the property which he holds under a lien or pledge to any third person, by reason of any assignment, lawful repledge, or otherwise, such lienor or pledgee shall be liable to the owner of the property for the safekeeping and safe return of such property, and shall in such case be answerable for its loss or for any damage to it while it was out of his possession.

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§38-11-13. How possessory lien may be waived, lost or released.

Any lien or pledge mentioned in this article which is dependent upon the lienor's possession shall be released by the lienor:

(a) By the voluntary surrender of the possession of the property upon which the lien is claimed;

(b) By the payment or tender by the owner of such property, or any person having an interest in such property, to the lienor, of the amount of the debt due such lienor, for which debt such lien is properly held;

(c) By the assertion of the person holding such property of some other claim or interest in the property, inconsistent with the right of the owner to have possession of his property upon the payment of the debt for which a lien might lawfully have been claimed;

(d) By the fraudulent assertion of a claim of an amount greater than is due to such claimant for the services or charges for which the lien is claimed;

(e) By the removal of the property, by the lienor, outside the State of West Virginia, without the written consent of the owner of the property: Provided, however, That this subdivision shall not apply to notes, bonds, certificates of stock, warehouse receipts, bills of lading, or other evidences of indebtedness or deposit;

(f) By the failure or refusal, upon the written demand of the owner of the property, or upon the written demand of any other person lawfully entitled to discharge the lien and receive the property into his possession, to return the property without expense to the owner thereof, other than the expense mentioned in section ten of this article, to the place where the property was first deposited with the lienor by the owner, so that the owner or such other person may redeem the property: Provided, however, That if such place is no longer within the possession or control of the lienor, the lienor may designate some other convenient place, not more than one fourth mile distant from such place of deposit, where, at some convenient time within ten days after the demand made upon the lienor, the owner or other person entitled to do so may receive the property upon the payment of the debt and other lawful charges for which the lien is held, and, in such case, unless the owner shall appear at such time and place and pay or tender the amount of the debt and other lawful charges, the lienor's lien shall not be lost, but the lienor shall have a lien for the expense of bringing such property to such place.

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§38-11-14. Enforcement of lien or pledge.

Any person holding personal property in his possession under a lien or pledge may satisfy such lien in any manner agreed upon between the owner and the lienor or, if there be no such agreement, in the following manner:

The lienor or pledgee shall give a written notice to the person on whose account the goods are held and to any other person known by the lienor to claim an interest in the goods. Such notice shall be given by delivery in person or by registered letter addressed to the last-known place of business or abode of the person to be notified. The notice shall contain:

(a) An itemized statement of the lienor's or pledgee's claim, showing the sum due at the time of the notice and the date or dates when it became due;

(b) A brief description of the goods against which the lien or pledge exists;

(c) A demand that the amount of the claim as stated in the notice, and of such further claim as shall accrue, shall be paid on or before a day mentioned, not less than seven days from the delivery of the notice. If delivery of notice is made by mail instead of personal delivery, such delivery shall be by registered or certified mail, return receipt requested, and such delivery shall be complete when such notice is deposited in the United States mail, postage prepaid, addressed to the debtor at his last known address; and

(d) A statement that unless the claim is paid within the time specified the goods will remain in the possession and control of the lienor or pledgee and he will assert in a court of competent jurisdiction his legal right to hold and sell the property for the amount of the debt and to otherwise proceed for payment of the debt.

If the debt has not been fully satisfied by the day following the date specified for payment in the notice hereinabove provided for, the lienor or pledgee shall either release the property to its owner or other appropriate custodian or continue to retain the property and sue upon the debt and the right of possession in a court of competent jurisdiction. Any such suit shall proceed expeditiously toward judgment in manner and form prescribed by law for other civil actions.

Unless a suit to enforce any lien authorized by this article be brought in a court of competent jurisdiction within thirty days after the delivery of the notice hereinabove provided for, such lien shall be discharged.

At any time before judgment in any such suit, any person claiming a right of property or possession in the property at issue may pay the lienor or pledgee the amount necessary to satisfy his lien or pledge and the reasonable expenses and liabilities, including all court costs, incurred in protecting and proceeding upon the lien or pledge up to the time of such payment or such person may execute a bond with good security, conditioned to pay the lienor who may be damaged by the release of property under the lien, to be approved by the

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court, in a penalty not to exceed the lesser of the amount of the lien with reasonable court costs thereupon or the value of the property in the possession of the lienor. The lienor or pledgee shall deliver the goods to the person making such payment or posting such bond, if he is a person entitled to the possession of the goods or payment of charges thereon. Otherwise the lienor or pledgee shall retain possession of the goods according to the terms of the original contract of deposit and shall proceed upon the suit.

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§38-11-15. Sale or disposition of perishable or hazardous goods by lienor or pledgee.

If goods which are subject to a lien or pledge under this article are such that they are perishable or threaten to decline in value speedily, or are of a hazardous nature, the lienor or pledgee may give such notice to the owner, or to the person in whose name the goods are stored, as is commercially reasonable under the circumstances, to satisfy the lien or pledge upon such goods and to remove them, and in the event of the failure of such person to satisfy the lien or pledge and to remove the goods within the time specified within the notice, the lienor may sell the goods at public or private sale. If the lienor after a reasonable effort is unable to sell such goods, he may dispose of them in any lawful manner, and shall incur no liability by reason thereof.

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§38-11-16. Other remedies of lienor or pledgee.

The remedy for enforcing a lien or pledge provided for in this article does not preclude any other remedies allowed by law for the enforcement of a lien or pledge against personal property nor bar the right to recover so much of the lienor's or pledgee's claim as shall not be recovered under the provisions of this article.

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§38-11-17.

Repealed.

Acts, 1981 Reg. Sess., Ch. 141.

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