

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1945

ENROLLED

SENATE BILL No. 181

(By Mr. Bear _____)

PASSED March 9 1945

In Effect From _____ Passage

JARRETT PRINTING COMPANY, CHARLESTON, W. VA.



181

ENROLLED
Senate Bill No. 181

(BY MR. BEAN)

[Passed March 9, 1943; in effect from passage.]

AN ACT to amend chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article to be designated article fourteen, defining the terms "factoring", "factor" and "factors", providing for liens of factors upon goods or merchandise, and the giving and filing of notice of such liens.

Be it enacted by the Legislature of West Virginia:

That chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, to be designated article fourteen, to read as follows:

Article 14. Factors' Liens.

Section 1. *Definitions.*—The term “factoring” as used
2 in this article means the financing of a manufacturer in
3 his purchases, manufacture and sales of goods and mer-
4 chandise.

5 The terms “factor” and “factors” wherever used in this
6 article include banks, persons, firms and corporations,
7 and their successors in interest, who purchase or lend on
8 the security of accounts receivable or who advance money
9 on the security of materials, goods in process, or mer-
10 chandise, whether or not they are employed to sell such
11 materials, goods in process, or merchandise.

Sec. 2. *Factors' Liens.*—If so provided by any written
2 agreement, all factors shall have a continuing general lien
3 upon all materials, goods in process, and merchandise
4 from time to time consigned to or pledged with them,
5 whether in their constructive, actual or exclusive oc-
6 cupancy or possession or not, and upon any accounts re-
7 ceivable or other proceeds resulting from the sale or other
8 disposition of such materials, goods in process, and mer-
9 chandise, for all their loans and advances to or for the

10 account of the person creating the lien (hereinafter called
11 the borrower), together with interest thereon, and also
12 for the commissions, obligations, indebtedness, charges,
13 and expenses properly chargeable against or due from
14 said borrower and for the amounts due or owing upon
15 any notes or other obligations given to or received by
16 them for or upon account of any such loans or advances,
17 interest, commissions, obligations, indebtedness, charges,
18 and expenses, and such lien shall be valid from the time
19 of filing the notice hereinafter referred to, whether such
20 materials, goods in process, or merchandise shall be in
21 existence at the time of the agreement creating the lien or
22 at the time of filing such notice or shall come into exist-
23 ence subsequently thereto or shall subsequently thereto
24 be acquired by the borrower: *Provided*, There shall be
25 placed and maintained on the door of, or in a conspicuous
26 place at, one of the principal entrances of the place of
27 business or other premises in or at which such materials,
28 goods in process, and merchandise, or any part thereof,
29 shall be located, kept or stored, the name of the factor in
30 legible lettering and a designation of said factor as factor;

31 and, *Provided further*, That a notice of the lien is filed
32 stating:

33 a. The name of the factor, the name under which the
34 factor does business, if an assumed name; the principal
35 place of business of the factor within the state, or if he
36 has no place of business within the state, his principal
37 place of business outside this state; and if the factor is a
38 partnership or association, the name of the partners, and
39 if a corporation, the state under whose laws it was or-
40 ganized;

41 b. The name of the borrower, and the interest of such
42 person in the materials, goods in process, and merchan-
43 dise, as far as known to the factor;

44 c. The general character of materials, goods in process,
45 and merchandise subject to the lien, or which may become
46 subject thereto, and the period of time during which such
47 loans or advances may be made under the terms of the
48 agreement providing for such loans or advances and for
49 such lien and the maximum amount to be loaned or ad-
50 vanced under such agreement. Amendments of the notice
51 may be filed from time to time to record any changes in

52 the information contained in the original, subsequent or
53 amended notices.

Sec. 3. *Filing*.—Such notice must be verified by the
2 factor or his agent, to the effect that the statements
3 therein contained are true to the best of his knowledge.
4 It must be filed in the office of the clerk of the county
5 court in the county where the materials, goods in process,
6 or merchandise subject to the lien, or any part thereof,
7 are, or at any time shall be located, kept or stored, and
8 also, if the factor has an office or principal place of busi-
9 ness in the state, in the county where such principal of-
10 fice or place of business of the factor within the state is
11 or at any time shall be located. The clerk shall file every
12 such notice presented to him for that purpose and shall
13 endorse thereon its number and the time of its receipt.
14 The clerk at the time of filing such notice shall, upon
15 request, issue to the person filing the same a receipt in
16 writing setting forth the filing data. The clerk shall en-
17 ter in a book provided for that purpose, in separate
18 columns, the names of the parties named in each notice
19 so filed under the head of borrowers and factors, the

20 number of such notice and the date of filing thereof, and
21 the general character of the merchandise as therein stated.
22 The names of the persons, firms or corporations creating
23 the liens, as stated in the notice, shall be arranged in
24 alphabetical order under the head of borrower. The
25 clerk shall be entitled to receive a fee of one dollar for
26 the filing and indexing of each such notice.

Sec. 4. *Effect of Filing.*—Such notice shall be filed within
2 thirty days after the making of the agreement and shall be
3 effectual from the time of the filing thereof as against
4 all claims and unsecured creditors of the borrower and
5 as against subsequent liens of creditors, except that if,
6 pursuant to the laws of this state, a lien should subse-
7 quently attach to the materials, goods in process, or mer-
8 chandise in favor of a processor, dyer, mechanic, or other
9 artisan, or in favor of a landlord, then the lien of the
10 factor on such materials, goods in process, or merchandise
11 shall be subject to such subsequent lien. When materials,
12 goods in process, or merchandise subject to the lien pro-
13 vided for by this act are sold in the ordinary course of
14 the business of the borrower, such lien, whether or not

15 the purchaser has knowledge of the existence thereof,
16 shall terminate as to the materials, goods in process, or
17 merchandise and shall attach to the proceeds of such sale
18 in the hands of the borrower.

Sec. 5. *Discharge.*—Upon the payment or satisfaction
2 of indebtedness secured by any lien specified in this act,
3 the factor or his legal representative, upon the request
4 of any person interested in the said materials, goods in
5 process, and merchandise, shall sign and acknowledge a
6 certificate setting forth such payment or satisfaction.
7 The county clerk with whom the notice of lien is filed,
8 on receipt of such certificate or a copy thereof certified
9 as required by law, shall file the same in his office and
10 write the word “Discharged” in the book where the notice
11 of lien is entered, opposite the entry thereof, and the
12 lien is thereby discharged. The county clerk shall be
13 entitled to receive a fee of fifty cents for filing each such
14 certificate of payment or satisfaction. All notices of liens
15 filed pursuant to this act and not satisfied by filing a
16 certificate setting forth payment or satisfaction thereof

17 shall be deemed to be and remain in full force and effect
18 under this act without further or other filing.

Sec. 6. *Returned Merchandise and Allowances.*—Where
2 accounts receivable, whether or not arising out of the
3 sale of materials, goods in process, or merchandise which
4 has become subject to the lien provided for by this act
5 by compliance with the provisions of section two hereof,
6 are assigned to a factor, the right to or lien of the factor
7 upon any balance remaining owing on such accounts
8 receivable and his right to or lien upon any other ac-
9 counts receivable assigned to him by the assignor shall
10 not be invalidated by reason of the fact that the materials,
11 goods in process, or merchandise sold, or any part thereof,
12 are returned to or recovered by the assignor from the
13 person owing the account receivable and is thereafter
14 dealt with by him as his own property or by reason of
15 the fact that the assignor grants credits, allowances or
16 adjustments to the person owing an account receivable,
17 irrespective of whether the factor shall have consented
18 to, or acquiesced in, such acts of the assignor.

Sec. 7. *Common Law Lien.* When any factor, or any

2 third party for the account of any such factor, shall have
3 possession of materials, goods in process, or merchandise,
4 such factor shall have a continuing general lien, as set
5 forth in section two of this act, without filing the notice
6 and posting the sign provided for in this act.

Sec. 8. *Construction.*—This act is to be construed liber-

2 ally to secure the beneficial interest and purposes thereof.
3 A substantial compliance with its several provisions shall
4 be sufficient for the validity of a lien and to give juris-
5 diction to the courts to enforce the same. Nothing in this
6 act shall be construed as affecting or limiting any exist-
7 ing or future lien at common law or any rights at common
8 law, or any right given by any other statute, and as to
9 any transaction falling within the provisions both of this
10 act and of any other statute of this state requiring filing,
11 recording, consent, publication, notices, or formalities of
12 execution, the factor shall not be required to comply
13 with both, but by complying with the provisions of either,
14 at his election, may have the protection given by the law
15 complied with.

The Joint Committee on Enrolled Bills hereby certifies that
the foregoing bill is correctly enrolled.

Charles C Morris

Chairman Senate Committee

Jack Goyette
Chairman House Committee

Originated in the Senate

Takes effect from passage

Howard Hughes
Clerk of the Senate

Steph
Clerk of the House of Delegates

Amved W. Vickers
President of the Senate

John E. Amos
Speaker House of Delegates

The within Approved this the 14
day of March, 1945.

Clarence Meadows
Governor.

Filed in the office of the Secretary of State
of West Virginia MAR 15 1945

Wm. S. O'BRIEN,
Secretary of State