

Date 3-23-81

Time 4:30 pm

No: 150

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1981



ENROLLED

SENATE BILL NO. 150

(By Mr. Stephoe)



PASSED March 9 1981

In Effect ninety days from Passage



ENROLLED
Senate Bill No. 150
(By MR. STEPTOE)

[Passed March 9, 1981; in effect ninety days from passage.]

AN ACT to repeal section seventeen, article eleven, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections three, five, six, eight, fourteen, fifteen and sixteen of said article, all relating to revising the state law on miscellaneous liens and pledges to provide for due process of law with respect to personal property retained by lienors and pledgees; stating the rights of lienors for the retention of said property; relating to improver's, storer's and transporter's liens on personal property and animals and liens for lodging and board; relating to liens of humane officers and liens for certain services of male animals; providing a specific remedy and method for the enforcement of said miscellaneous liens and pledges; providing for notices and court proceedings; providing for the sale or disposition of perishable or hazardous goods; and allowing certain other remedies.

Be it enacted by the Legislature of West Virginia:

That section seventeen, article eleven, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections three, five, six, eight, fourteen, fifteen and sixteen of said article be amended and ~~repealed~~, to read as follows:

ARTICLE 11. MISCELLANEOUS LIENS AND PLEDGES.

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

1 A person who, while in possession thereof, makes,
2 alters, repairs, stores, transports, or in any way enhances

3 the value of an article of personal property, or boards,
4 pastures, feeds, trains, improves or transports any animal,
5 shall have a lien upon such article or animal while law-
6 fully in the possession thereof, for the charges agreed
7 upon, or, if no charges be agreed upon, then for his just
8 and reasonable charges for the work done or the board or
9 storage or transportation furnished, to the extent and in
10 the manner provided for in section fourteen of this article,
11 and may retain possession thereof until such charges are
12 paid. Such lien shall be good against the person who de-
13 posited the property with the lienor, and against any
14 other person by whose authority or with whose consent
15 the property was deposited. If two or more articles of
16 personal property are made, altered, repaired, stored,
17 transported or enhanced in value as aforesaid, or two or
18 more animals are boarded, pastured, fed, trained, im-
19 proved or transported as aforesaid, under one contract or
20 agreement, any one or more of such articles or animals
21 may be held under the lien, hereinbefore mentioned, for
22 all of the charges upon all such articles included in such
23 contract or agreement.

§38-11-5. Lien for lodging and board.

1 The owner or keeper of any hotel, inn, lodginghouse,
2 restaurant, eating house or boardinghouse shall have a
3 lien upon and, to the extent and in the manner provided
4 for in section fourteen of this article, may retain posses-
5 sion of the baggage, luggage or other personal property of
6 any kind, brought to such hotel, inn, lodginghouse, restau-
7 rant, eating house or boardinghouse by, or with the con-
8 sent of, the owner thereof, for the amount of his lawful
9 claim for lodging, board or other accommodations or
10 facilities furnished by him at that time to such person
11 bringing the same, or to any other person for whose
12 charges the person so bringing such property is liable.

§38-11-6. Lien of humane officer.

1 When any humane officer shall provide any neglected or
2 abandoned animal with proper food, shelter and care, he
3 shall have a lien upon such animal for the expense there-
4 of; and such expense shall be charged against the owner

5 of such animal. Until the humane officer shall take pos-
6 session of the animal or place the animal in the possession
7 of some person other than the owner, to the extent and in
8 the manner provided for in section fourteen of this article,
9 such lien shall not be good against a purchaser of the
10 animal from the owner, for value, and without notice of
11 the facts creating the lien.

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

1 The owner of any stallion, jack or bull, that is duly
2 registered under the laws of the state of West Virginia,
3 shall have a lien upon the foal or calf thereof, whenever
4 the service of such stallion, jack or bull was had by
5 contract with the owner, or agent of the owner, of the dam
6 or cow of such foal or calf, at the time of such service.
7 Such lien shall cease unless the person desiring to avail
8 himself thereof shall, within six months from the birth of
9 such foal or calf, file before some magistrate in the county
10 in which such foal or calf may be, his own affidavit, or
11 that of some credible person, stating the amount of his
12 lien against such foal or calf and that such amount is due
13 by contract, also a description of the foal or calf upon
14 which such lien is claimed. Such affidavit shall be filed
15 and preserved by such magistrate, for which service he
16 shall receive any fee provided by law. Upon the filing of
17 such affidavit, such proceedings shall be had for the en-
18 forcement of such lien as are provided in section fourteen
19 of this article.

§38-11-14. Enforcement of lien or pledge; notice; court proceedings.

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

5 The lienor or pledgee shall give a written notice to the
6 person on whose account the goods are held and to any
7 other person known by the lienor to claim an interest in
8 the goods. Such notice shall be given by delivery in per-
9 son or by registered letter addressed to the last-known

10 place of business or abode of the person to be notified.

11 The notice shall contain:

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

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

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

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

33 If the debt has not been fully satisfied by the day, *now* fol-
34 lowing the date specified for payment in the notice herein-
35 above provided for, the lienor or pledgee shall either
36 release the property to its owner or other appropriate
37 custodian or continue to retain the property and sue upon
38 the debt and the right of possession in a court of compe-
39 tent jurisdiction. Any such suit shall proceed expedi-
40 tiously toward judgment in manner and form prescribed
41 by law for other civil actions.

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

46 At any time before judgment in any such suit, any per-
47 son claiming a right of property or possession in the
48 property at issue may pay the lienor or pledgee the

49 amount necessary to satisfy his lien or pledge and the
50 reasonable expenses and liabilities, including all court
51 costs, incurred in protecting and proceeding upon the lien
52 or pledge up to the time of such payment or such person
53 may execute a bond with good security, conditioned to
54 pay the lienor who may be damaged by the release of
55 property under the lien, to be approved by the court, in
56 a penalty not to exceed the lesser of the amount of the
57 lien with reasonable court costs thereupon or the value
58 of the property in the possession of the lienor. The lienor
59 or pledgee shall deliver the goods to the person making
60 such payment or posting such bond, if he is a person en-
61 titled to the possession of the goods or payment of charges
62 thereon. Otherwise the lienor or pledgee shall retain
63 possession of the goods according to the terms of the
64 original contract of deposit and shall proceed upon the
65 suit.

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

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

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

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

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

R. J. Baylor

Chairman Senate Committee

Tony E. Whitlow
Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

Todd C. Nichols

Clerk of the Senate

V. Blankenship

Clerk of the House of Delegates

Alvin R. M. ...

President of the Senate

W. G. Lee, Jr.

Speaker House of Delegates

The within *is approved* this the *23*

day of *March*, 1981.

John R. ...
Governor



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OFFICE OF THE GOVERNOR

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OFFICE
SECY. OF STATE