

No: 1306

APPROVED AND SIGNED BY THE GOVERNOR

RECEIVED

Date 3-29-83

MAR 24 3 39 PM '83

OFFICE OF THE GOVERNOR

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1983

— ● —

# ENROLLED

Com. Sub. for  
HOUSE BILL No. 1306

(By Mr. Hamilton)

— ● —

Passed March 12, 1983

In Effect Ninety Days From Passage



**ENROLLED**  
**COMMITTEE SUBSTITUTE**  
**FOR**  
**H. B. 1306**  
**(By MR. HAMILTON)**

[Passed March 12, 1983; in effect ninety days from passage.]

AN ACT to amend and reenact section thirty-six, article two, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the discharge of mechanic's lien by depositing the amount in dispute in escrow and the disbursement of the escrow.

*Be it enacted by the Legislature of West Virginia:*

That section thirty-six, article two, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 2. MECHANICS' LIENS.**

**§38-2-36. Discharge or release of lien; recordation; escrow; disbursement of escrow.**

1       (a) When a debt secured by any lien mentioned in this  
2 article is fully paid at any time after the lien creditor shall have  
3 filed his notice of such lien in the office of the clerk of the  
4 county commission, such creditor assignee shall cause the  
5 clerk to enter a discharge of such lien in the margin of the  
6 book in which such account is entered and immediately op-  
7 posite thereto, or shall execute a release thereof, which shall  
8 be recorded in the book in which such notice is entered and  
9 noted on the margin of such notice.

10       (b) (1) At any time after a lien creditor has given notice of  
11 lien as required by the provisions of this article and has sub-

12 subsequently duly filed such notice of lien with the clerk of the  
13 county commission as provided for in this article, the owner  
14 or any person against whom the lien is claimed may apply to  
15 the circuit court having jurisdiction to enforce such lien, by  
16 petition, for an order authorizing such owner or other person  
17 against whom the lien is claimed to deposit, in escrow, with the  
18 clerk of the circuit court, an amount equal to the sum set out  
19 as due in the notice of lien, and directing the circuit clerk to  
20 execute a release of the lien. Previous to the filing of such peti-  
21 tion, the petitioner shall cause to be served upon the lien credi-  
22 tor a notice of the time and place that such application will be  
23 made, which notice shall be served by registered mail, return  
24 receipt requested, addressed to the lien creditor or his autho-  
25 rized agent at the address set forth in the notice of lien: *Pro-*  
26 *vided*, That if no such address is set forth in the notice of lien,  
27 the petitioner shall serve the notice, setting forth the time and  
28 place that his application will be made, in the same manner as  
29 original process is served for the commencement of civil ac-  
30 tions.

31 (2) At the hearing upon the petition, the court shall ascer-  
32 tain what interest, if any, might reasonably be expected to  
33 accrue on the sum claimed to be due, either by contract or by  
34 operation of law, and subsequently be payable to the lien  
35 creditor, should he prevail upon his claim. The court shall also  
36 determine the current rate of return upon investments made by  
37 the general receiver of the court at the time of the hearing,  
38 and ascertain what rate of interest might reasonably be earned  
39 upon the petitioner's escrow deposit when paid into the court.  
40 To the extent that the anticipated interest due to the lien  
41 creditor exceeds the anticipated return upon the investment of  
42 the escrow deposit, the court may require an additional de-  
43 posit beyond the sum set forth in the notice of lien, as the  
44 interests of the parties may require. The order authorizing the  
45 deposit and directing the execution of the release shall, if the  
46 court anticipates that complex or extended litigation may arise  
47 in resolving the issue of the validity of liens or claims in the  
48 case, require that the petitioner or other parties give security  
49 before the court, or the clerk thereof, for payment of the costs  
50 which may be awarded in the court, and of the fees due, or to  
51 become due, in any action to determine such issue.

52 (3) If an escrow deposit is authorized by the court, such  
53 deposit shall be made by cash, and when paid into court, shall  
54 be received by the general receiver of the court, who shall take  
55 charge of and invest the money deposited in the manner pro-  
56 vided for in section one, article six, chapter fifty-one of this  
57 code until otherwise ordered to pay out or dispose of the same  
58 by the circuit court. Upon presentation to the clerk of the  
59 county commission wherein the notice of lien is filed of an  
60 order of the court and a receipt executed by the clerk of the  
61 circuit court for the amount required to be deposited by the  
62 terms of the order, the clerk of the county commission shall  
63 file the order and shall enter a discharge of the lien in the  
64 margin of the book in which such account is entered and im-  
65 mediately opposite thereto, or shall execute a release thereof,  
66 which shall be recorded in the book in which such notice is  
67 entered and noted on the margin of such notice.

68 (4) Unless an action to determine the validity of the credi-  
69 tor's claim is commenced within six months after the creditor  
70 shall have filed his notice of lien in the office of the clerk of  
71 the county commission as provided for in this article, the  
72 court shall upon motion of the depositor, order the general  
73 receiver to pay out to the depositor the sum deposited, to-  
74 gether with any dividends and interest, if any, earned upon the  
75 investment of the deposit, less any compensation for the ser-  
76 vices of the general receiver as the court may direct in accor-  
77 dance with the provisions of section seven, article six, chapter  
78 fifty-one of this code. If the claim is satisfied or settled and  
79 compromised at any time while secured by the deposit made  
80 with the general receiver but before an action is commenced,  
81 the court shall, upon proof of satisfaction or settlement and  
82 compromise, order the general receiver to pay out the deposit  
83 to the depositor in the same manner as though suit was not  
84 commenced within the requisite period of six months as de-  
85 scribed above. If an action is commenced, the general receiver  
86 shall thereafter pay out the money deposited and the dividends  
87 and interest, if any, earned upon the investment of the deposit,  
88 as the court may order or decree, less any compensation for  
89 the services of the general receiver as the court may direct in  
90 accordance with the provisions of said section seven.

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

*Harrell B. Blythe*

Chairman Senate Committee

*Ronald Anello*

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

*Todd C. Walker*

Clerk of the Senate

*Donald L. Kopp*

Clerk of the House of Delegates

*Charles P. McSwain*

President of the Senate

*John H. Lee, Jr.*

Speaker House of Delegates

The within *is approved* this the *29*  
day of *March*, 1983.

*John A. Reedy*

Governor

RECEIVED

83 MAR 31 11: 22

OFFICE  
SECY. OF STATE