

FILED

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2014

ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 4347

(By Delegates Shott, Sponaugle, Sobonya,
Manchin, Lane, Poore and Pino)

Passed March 8, 2014

In effect ninety days from passage.

HB4347

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E N R O L L E D

COMMITTEE SUBSTITUTE

**OFFICE WEST VIRGINIA
SECRETARY OF STATE**

FOR

H. B. 4347

**(BY DELEGATES SHOTT, SPONAUGLE, SOBONYA,
MANCHIN, LANE, POORE AND PINO)**

[Passed March 8, 2014; in effect ninety days from passage.]

AN ACT to amend and reenact §38-2-21 and §38-2-34 of the Code of West Virginia, 1931, as amended, relating to creating an affirmative defense to an action to enforce a lien.

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.

- 1 (a) No payment by the owner to any contractor or
- 2 subcontractor of any part or all of the contract price for the
- 3 erection and construction of any a building, structure or
- 4 improvement appurtenant to a building, structure or

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15 improvement or for any part or section of a work may affect,
6 impair or limit the lien of the subcontractor, laborer, or
7 materialman or furnisher of machinery or other necessary
8 material or equipment, as provided in this article, except as
9 otherwise provided in this article.

10 (b) Notwithstanding any provisions of this code to the
11 contrary, it is an affirmative defense, or an affirmative partial
12 defense, as the case may be, in any action to enforce a lien
13 pursuant to this article that the owner is not indebted to the
14 contractor or is indebted to the contractor for less than the
15 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
18 under a contract entered into by the owner prior to its occupancy
19 as the owner's primary residence; or

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

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

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

10 (b) Notwithstanding any provisions of this code to the
11 contrary, it is an affirmative defense, or an affirmative partial
12 defense, as the case may be, in any action to enforce a lien
13 pursuant to this article that the owner is not indebted to the
14 contractor or is indebted to the contractor for less than the
15 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
18 under a contract entered into by the owner prior to its occupancy
19 as his or her primary residence; or

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

26 (c) As used in subsection (b):

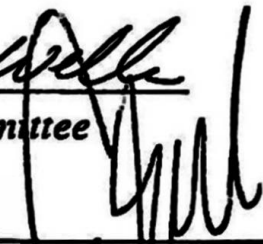
27 (1) 'Dwelling' or 'residence' means any building or structure
28 intended for habitation, in whole or part, and includes, but is not
29 limited to, any house, apartment, mobile home, house trailer,
30 modular home, factory-built home and any adjacent
31 outbuildings.

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

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



Chairman, House Committee



Member ~~Chairman~~, Senate Committee

Originating in the House.

In effect ninety days from passage.



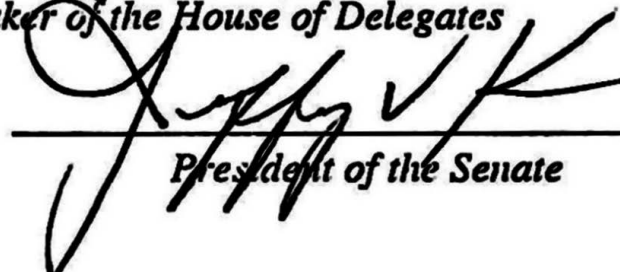
Clerk of the House of Delegates



Clerk of the Senate



Speaker of the House of Delegates



President of the Senate

The within is approved this the 1st
day of April, 2014.



Governor

PRESENTED TO THE GOVERNOR

11.28.2014

Time 10:45 pm