

Senate Bill No. 347

(By Senator Sypolt)

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[Introduced January 31, 2011; referred to the Committee on Labor;
and then to the Committee on the Judiciary.]

10 A BILL to amend and reenact §38-2-36 of the Code of West Virginia,
11 1931, as amended, relating to permitting a person to file a
12 bond in escrow with a court in an amount sufficient to cover
13 a mechanic's lien.

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

15 That §38-2-36 of the Code of West Virginia, 1931, as amended,
16 be amended and reenacted to read as follows:

17 **ARTICLE 2. MECHANICS' LIENS.**

18 **§38-2-36. Discharge or release of lien; recordation; escrow;**
19 **disbursement of escrow.**

20 (a) When a debt secured by any lien mentioned in this article
21 is fully paid at any time after the lien creditor shall have filed
22 his or her notice of such lien in the office of the clerk of the
23 county commission, such creditor assignee shall cause the clerk to
24 enter a discharge of such lien in the margin of the book in which
25 such account is entered and immediately opposite thereto, or shall
26 execute a release thereof, which shall be recorded in the book in
27 which such notice is entered and noted on the margin of such

1 notice.

2 (b) (1) At any time after a lien creditor has given notice of
3 lien as required by ~~the provisions of~~ this article and has
4 subsequently duly filed such notice of lien with the clerk of the
5 county commission as provided ~~for~~ in this article, the owner or any
6 person against whom the lien is claimed may apply to the circuit
7 court having jurisdiction to enforce such lien, by petition, for an
8 order authorizing such owner or other person against whom the lien
9 is claimed to deposit, in escrow, with the clerk of the circuit
10 court, an amount equal to the sum set out as due in the notice of
11 lien, and directing the circuit clerk to execute a release of the
12 lien. Previous to the filing of such petition, the petitioner
13 shall cause to be served upon the lien creditor a notice of the
14 time and place that such application will be made, which notice
15 shall be served by registered mail, return receipt requested,
16 addressed to the lien creditor or his or her authorized agent at
17 the address set forth in the notice of lien: *Provided*, That if no
18 such address is set forth in the notice of lien, the petitioner
19 shall serve the notice, setting forth the time and place that his
20 or her application will be made, in the same manner as original
21 process is served for the commencement of civil actions.

22 (2) At the hearing upon the petition, the court shall
23 ascertain what interest, if any, might reasonably be expected to
24 accrue on the sum claimed to be due, either by contract or by
25 operation of law, and subsequently be payable to the lien creditor,
26 should he or she prevail upon his or her claim. The court shall

1 also determine the current rate of return upon investments made by
2 the general receiver of the court at the time of the hearing, and
3 ascertain what rate of interest might reasonably be earned upon the
4 petitioner's escrow deposit when paid into the court. To the
5 extent that the anticipated interest due to the lien creditor
6 exceeds the anticipated return upon the investment of the escrow
7 deposit, the court may require an additional deposit beyond the sum
8 set forth in the notice of lien, as the interests of the parties
9 may require. The order authorizing the deposit and directing the
10 execution of the release shall, if the court anticipates that
11 complex or extended litigation may arise in resolving the issue of
12 the validity of liens or claims in the case, require that the
13 petitioner or other parties give security before the court, or the
14 clerk thereof, for payment of the costs which may be awarded in the
15 court, and of the fees due, or to become due, in any action to
16 determine such issue.

17 (3) If an escrow deposit is authorized by the court, such
18 deposit shall be made by cash, or good and sufficient bond or
19 security, and when paid into court, shall be received by the
20 general receiver of the court, who shall take charge of and invest
21 the money deposited in the manner provided for in section one,
22 article six, chapter fifty-one of this code until otherwise ordered
23 to pay out or dispose of the same by the circuit court. Upon
24 presentation to the clerk of the county commission wherein the
25 notice of lien is filed of an order of the court and a receipt
26 executed by the clerk of the circuit court for the amount required
27 to be deposited by the terms of the order, the clerk of the county

1 commission shall file the order and shall enter a discharge of the
2 lien in the margin of the book in which such account is entered and
3 immediately opposite thereto, or shall execute a release thereof,
4 which shall be recorded in the book in which such notice is entered
5 and noted on the margin of such notice.

6 (4) Unless an action to determine the validity of the
7 creditor's claim is commenced within six months after the creditor
8 shall have filed his or her notice of lien in the office of the
9 clerk of the county commission as provided for in this article, the
10 court shall, upon motion of the depositor, order the general
11 receiver to pay out to the depositor the sum deposited, together
12 with any dividends and interest, if any, earned upon the investment
13 of the deposit, less any compensation for the services of the
14 general receiver as the court may direct in accordance with ~~the~~
15 ~~provisions of~~ section seven, article six, chapter fifty-one of this
16 code. If the claim is satisfied or settled and compromised at any
17 time while secured by the deposit made with the general receiver
18 but before an action is commenced, the court shall, upon proof of
19 satisfaction or settlement and compromise, order the general
20 receiver to pay out the deposit to the depositor in the same manner
21 as though suit was not commenced within the requisite period of six
22 months as described above. If an action is commenced, the general
23 receiver shall thereafter pay out the money deposited and the
24 dividends and interest, if any, earned upon the investment of the
25 deposit, as the court may order or decree, less any compensation
26 for the services of the general receiver as the court may direct in
27 accordance with ~~the provisions of said~~ section seven, article six,

1 chapter fifty-one of this code.

NOTE: The purpose of this bill is to permit a person to file a bond, instead of cash, in escrow with a court in an amount sufficient to cover a mechanics' lien.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.