

**Senate Bill No. 2001**

(By Senators Kessler (Mr. President) and M. Hall,

By Request of the Executive)

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[Introduced May 19, 2014; referred to the Committee on the Judiciary.]  
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A BILL to amend and reenact §38-2-21 and §38-2-34 of the Code of West Virginia, 1931, as amended, as contained in chapter one hundred fifteen, Acts of the Legislature, regular session, 2014, all relating to delaying the effective date of the affirmative defense to an action to enforce a mechanic’s 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.**

(a) No payment by the owner to any contractor or subcontractor of any part or all of the contract price for the erection and construction of any a building, structure or improvement appurtenant to a building, structure or improvement or for any part or section of a work may affect,

1 impair or limit the lien of the subcontractor, laborer, or materialman or furnisher of machinery or  
2 other necessary material or equipment, as provided in this article, except as otherwise provided in  
3 this article.

4 (b) Notwithstanding any provisions of this code to the contrary, beginning on July 1, 2015,  
5 it is an affirmative defense, or an affirmative partial defense, as the case may be, in any action to  
6 enforce a lien pursuant to this article that the owner is not indebted to the contractor or is indebted  
7 to the contractor for less than the amount of the lien sought to be perfected, when:

8 (1) The property is an existing single-family dwelling;

9 (2) The property is a residence constructed by the owner or under a contract entered into by  
10 the owner prior to its occupancy as the owner's primary residence; or

11 (3) The property is a single-family, owner-occupied dwelling, including a residence  
12 constructed and sold for occupancy as a primary residence. This subdivision does not apply to a  
13 developer or builder of multiple residences except for the residence that is occupied as the primary  
14 residence of the developer or builder.

15 **§38-2-34. Time within which suit to enforce lien may be brought; right of other lienors to**  
16 **intervene.**

17 (a) Unless an action to enforce any lien authorized by this article is commenced in a circuit  
18 court within six months after the person desiring to avail himself or herself of the court has filed his  
19 or her notice in the clerk's office, as provided in this article, the lien shall be discharged; but an  
20 action commenced by any person having a lien shall, for the purpose of preserving the same, inure

1 to the benefit of all other persons having a lien under this article on the same property, and persons  
2 may intervene in the action for the purpose of enforcing their liens.

3 (b) Notwithstanding any provisions of this code to the contrary, beginning on July 1, 2015,  
4 it is an affirmative defense, or an affirmative partial defense, as the case may be, in any action to  
5 enforce a lien pursuant to this article that the owner is not indebted to the contractor or is indebted  
6 to the contractor for less than the amount of the lien sought to be perfected, when:

7 (1) The property is an existing single-family dwelling;

8 (2) The property is a residence constructed by the owner or under a contract entered into by  
9 the owner prior to its occupancy as his or her primary residence; or

10 (3) The property is a single-family, owner-occupied dwelling, including a residence  
11 constructed and sold for occupancy as a primary residence. This subdivision does not apply to a  
12 developer or builder of multiple residences except for the residence that is occupied as the primary  
13 residence of the developer or builder.

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

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

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

NOTE: The purpose of this bill is to establish a July 1, 2015, effective date for the affirmative defense of payment or partial payment to a contractor in an action to enforce a mechanic's lien.

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