

H. B. 202

(By Mr. Speaker, (Mr. Miley) and Delegate Armstead)
[By Request of the Executive]
[Introduced May 19, 2014; referred to the
Committee on the Judiciary.]

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

1 appurtenant to a building, structure or improvement or for any part
2 or section of a work may affect, impair or limit the lien of the
3 subcontractor, laborer, or materialman or furnisher of machinery or
4 other necessary material or equipment, as provided in this article,
5 except as otherwise provided in this article.

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

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

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

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

21 **§38-2-34. Time within which suit to enforce lien may be brought;**
22 **right of other lienors to intervene.**

23 (a) Unless an action to enforce any lien authorized by this

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

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

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

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

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

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

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

5 (2) 'Outbuilding' means any building or structure which
6 adjoins, is part of, belongs to, or is used in connection with a
7 dwelling, and shall include, but not be limited to, any garage,
8 shop, shed, 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.