

1 **H. B. 4347**

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3 (By Delegates Shott, Sponaugle, Sobonya,  
4 Manchin, Lane Poore ad Pino)  
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6 [Introduced January 28, 2014; referred to the  
7 Committee on the Judiciary.]  
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10 A BILL to amend and reenact §38-2-21 and §38-2-34 of the Code of  
11 West Virginia, 1931, as amended, all relating to affirmative  
12 defenses against mechanics' liens.

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

14 That §38-2-21 and §38-2-34 of the Code of West Virginia, 1931,  
15 as amended, be amended and reenacted, all to read as follows:

16 **ARTICLE 2. MECHANICS' LIENS.**

17 **§38-2-21. Effect of payment by owner to contractor or**  
18 **subcontractor.**

19 (a) No payment by the owner to any contractor or subcontractor  
20 of any part or all of the contract price for the erection and  
21 construction of any ~~such a~~ building, structure or improvement  
22 ~~appurtenant thereto~~ to a building, structure or improvement or for  
23 any part or section of ~~such a~~ work ~~shall~~ may affect, impair or  
24 limit the lien of the subcontractor, laborer, or materialman or

1 furnish of machinery or other necessary material or equipment, as  
2 provided ~~for~~ in this article, except as otherwise provided in this  
3 article.

4 (b) Notwithstanding any provisions of this code to the  
5 contrary, it is an affirmative defense in any action to enforce a  
6 lien pursuant to this article that the owner or some person acting  
7 on the owner's behalf has paid an amount sufficient to satisfy the  
8 contractual and legal obligations of the owner, including the  
9 initial purchase price or contract amount plus any additions or  
10 change orders, to the principal contractor or any subcontractor for  
11 the purpose of payment to the subcontractors or suppliers of  
12 laborers, materials, or services to the job, when:

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

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

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

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

24 (a) Unless a ~~suit in chancery~~ an action to enforce any lien

1 authorized by this article is commenced in a circuit court within  
2 six months after the person desiring to avail himself or herself  
3 ~~thereof shall have~~ of the court has filed his or her notice in the  
4 clerk's office, as ~~hereinbefore~~ provided in this article, ~~such the~~  
5 lien shall be discharged; but ~~a suit~~ an action commenced by any  
6 person having ~~such a~~ 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 ~~such~~ persons may intervene  
9 in ~~such suit~~ the action for the purpose of enforcing their liens ~~in~~  
10 ~~the same manner as in other chancery suits.~~

11 (b) In an action to enforce any lien authorized by this  
12 article, it is an affirmative defense that the owner or some person  
13 acting on the owner's behalf has paid an amount sufficient to  
14 satisfy the contractual and legal obligations of the owner,  
15 including the initial purchase price or contract amount plus any  
16 additions or change orders, to the principal contractor or any  
17 subcontractor for the purpose of payment to the subcontractors or  
18 suppliers of laborers or materials or services to the job, when:

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

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

23 (3) The property is a single-family, owner-occupied dwelling  
24 unit, including a residence constructed and sold for occupancy as

1 a primary residence. This subdivision does not apply to a developer  
2 or builder of multiple residences except for the residence that is  
3 occupied as the primary residence of the developer or builder.

NOTE: The purpose of this bill is add language to West Virginia Code providing for affirmative defenses against mechanic's liens.

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