

H. B. 2820

(BY DELEGATE(S) SHOTT, MANCHIN AND FOSTER)

[Introduced February 19, 2015; 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, all relating to affirmative defenses against mechanics' liens; and providing that property owners of single family dwellings or residences are not entitled to affirmative defenses to mechanics' liens if notice is timely given of the liability for unpaid bills for work performed or materials supplied.

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; notice by subcontractor, supplier, materialman, architect, engineer, equipment providers, laborers and others; notice by building permit, effect of notice.

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

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

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

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

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

28 (c) If notice is given to the owner pursuant to subsection (d)
29 of this section, the owner is not entitled to the protections
30 provided by this section and section thirty-four of this article.

31 (d) Subcontractors, suppliers, material men, architects,
32 engineers, equipment providers, laborers and others who wish to
33 preserve their mechanic's lien rights pursuant to this article shall
34 give notice to the owner as follows:

35 (1) Within ten business days of the first performance of labor
36 or services or provision of equipment or materials or supplies,
37 the subcontractor, supplier, material man, architect, engineer,

38 equipment providers, laborers and others who wish to preserve
39 their mechanic's lien rights pursuant to section one of this article
40 shall serve notice by certified mail on the owner of the property,
41 as defined in subsection (b) above, and by posting in a
42 conspicuous place on the job site a notice of intention to preserve
43 mechanic's lien rights. The notice shall be sufficient if it is
44 substantially in the following form, and must be prominently
45 disclosed in uppercase bold lettering of at least 12-point type and
46 be sufficiently clear so as to be readily understandable:

47 “Please take Notice that your home and real estate are
48 subject to a mechanic's lien for any unpaid balances due to
49 subcontractors, suppliers, material man, architects, engineers,
50 equipment providers, laborers and others. It is the owners'
51 responsibility to see that all bills are paid. If the bills are not
52 paid, it is possible that your home may be sold to cover the bills,
53 after the costs of applicable legal proceedings.”

54 Notice by one subcontractor, supplier, material man,
55 architect, engineer, equipment provider, laborers and others shall
56 inure to the benefit of all other persons having to give notice

57 under this article on the same property, as that property is
58 defined in subsection (b) of this section.

59 (2) Where building permits are required, the city, county or
60 municipality that is responsible for issuing building permits shall
61 give notice in the building permit of the right of subcontractors,
62 suppliers, material man, architects, engineers, equipment
63 providers, laborers and others to file a mechanic's lien. Notice
64 given on building permits shall include the same notice referred
65 to in subdivision (1) of this subsection, and shall require
66 acknowledgment from the owner in the form of a signed receipt:
67 Provided, That if the notice is given, then this is sufficient notice
68 to the owner and subcontractors, suppliers, material man,
69 architects, engineers, equipment providers, laborers and others
70 to preserve mechanic's lien rights.

**§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, except as stated in this section, and in section
12 twenty-one of this article, beginning on July 1, 2015, it is an
13 affirmative defense, or an affirmative partial defense, as the case
14 may be, in any action to enforce a lien pursuant to this article
15 that the owner is not indebted to the contractor or is indebted to
16 the contractor for less than the amount of the lien sought to be
17 perfected, when:

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

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

22 (3) The property is a single-family, owner-occupied
23 dwelling, including a residence constructed and sold for
24 occupancy as a primary residence. This subdivision does not

25 apply to a developer or builder of multiple residences except for
26 the residence that is occupied as the primary residence of the
27 developer or builder.

28 (c) If notice is provided in accordance with subsections (c)
29 and (d) of section twenty-one of this article, the owner is not
30 entitled to the protections of affirmative defenses or affirmative
31 partial defenses provided in this section and in section
32 twenty-one of this article.

33 ~~(c)~~ (d) As used in subsection (b):

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

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

NOTE: The purpose of this bill is to add language to the West Virginia Code providing for affirmative defenses against mechanic's liens. The bill provides that property owners of single family dwellings or residences are not entitled to affirmative

defenses to mechanics' liens if notice is timely given of the liability for unpaid bills for work performed or materials supplied.

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