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HOUSE BILL NO. 1902

FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Senator Mims
on February 12, 1999)

(Patron Prior to Substitute-Delegate Jaonnou)

*A BILL to amend and reenact §§ 43-4, 43-32 and 43-33 of the Code of Virginia, relating to bailees' liens and mechanics' liens.***Be it enacted by the General Assembly of Virginia:****1. That §§ 43-4, 43-32 and 43-33 of the Code of Virginia are amended and reenacted as follows:**

§ 43-4. Perfection of lien by general contractor; recordation and notice.

A general contractor, or any other lien claimant under §§ 43-7 and 43-9, in order to perfect the lien given by § 43-3, provided such lien has not been barred by § 43-4.01 C, shall file a memorandum of lien at any time after the work is commenced or material furnished, but not later than ninety days from the last day of the month in which he last performs labor or furnishes material, and in no event later than ninety days from the time such building, structure, or railroad is completed, or the work thereon otherwise terminated. The memorandum shall be filed in the clerk's office in the county or city in which the building, structure or railroad, or any part thereof is located. The memorandum shall show the names of the owner of the property sought to be charged, and of the claimant of the lien, the amount and consideration of his claim, and the time or times when the same is or will be due and payable, verified by the oath of the claimant, or his agent, including a statement declaring his intention to claim the benefit of the lien, and giving a brief description of the property on which he claims a lien. It shall be the duty of the clerk in whose office the memorandum is filed to record and index the same as provided in § 43-4.1, in the name of the claimant of the lien and of the owner of the property. From the time of such recording and indexing all persons shall be deemed to have notice thereof. The cost of recording the memorandum shall be taxed against the person found liable in any judgment or decree enforcing such lien. The lien claimant may file any number of memoranda but no memorandum filed pursuant to this chapter shall include sums due for labor or materials furnished more than 150 days prior to the last day on which labor was performed or material furnished to the job preceding the filing of such memorandum. However, any memorandum may include (i) sums withheld as retainages with respect to labor performed or materials furnished at any time before it is filed, but not to exceed ten percent of the total contract price and (ii) sums which are not yet due because the party with whom the lien claimant contracted has not yet received such funds from the owner or another third party. The time limitations set forth herein shall apply to all labor performed or materials furnished on construction commenced on or after July 1, 1980.

§ 43-32. Lien of keeper of livery stable, garage, marina, etc.

A. Every keeper of a livery stable, hangar, tie-down, marina, or garage, and every person pasturing or keeping any horses or other animals, vehicles, boats, aircraft, or harness, shall have a lien upon such horses and other animals, vehicles, boats, aircraft, and harness, for the amount which may be due him for the keeping, supporting, and care thereof, until such amount is paid.

B. In the case of any boat, aircraft, or vehicle subject to a chattel mortgage, security agreement, deed of trust, or other instrument securing money, the keeper of the marina, hangar, tie-down, or garage shall have a lien thereon for his reasonable charges for storage under this section not to exceed \$300 and for alteration and repair under § 43-33 not to exceed \$500 625. However, in the case of a storage lien, to obtain the priority for an amount in excess of \$150, the person asserting the lien shall give written notice by certified mail, return receipt requested, to any secured party of record at the Department of Motor Vehicles or the Department of Game and Inland Fisheries. If the secured party does not, within seven days of receipt of the notice, take or refuse redelivery to it or its designee, the lienor shall be entitled to priority for the full \$300. Notwithstanding a redelivery, the vehicle or watercraft shall be subject to subsection C D.

B-1C. In addition, any person furnishing services involving the towing and recovery of a boat, aircraft or vehicle, shall have a lien for all normal costs incident thereto, if the person asserting the lien gives written notice within seven days of receipt of the boat, aircraft or vehicle by certified mail, return receipt requested, to all secured parties of record at the Department of Motor Vehicles or the Department of Game and Inland Fisheries.

C D. In addition, any keeper shall be entitled to a lien against any proceeds remaining after the satisfaction of all prior security interests or liens, and may retain possession of such property until such charges are paid.

D E. Any lien created under this section shall not extend to any personal property which is not attached to or considered to be necessary for the proper operation of any motor vehicle, and it shall be

60 the duty of any keeper of such personal property to promptly return it to the owner.

61 ~~EF.~~ For the purposes of this section, in the case of a truck or combination of vehicles, the owner or
62 in the case of a rented or leased vehicle, the lessee of the truck or tractor truck shall be liable for the
63 costs of the towing, recovery, and storage of the cargo and of any trailer or semitrailer in the
64 combination. Nothing in this subsection, however, shall bar the owner of the truck or tractor truck from
65 subsequently seeking to recover from the owner of any trailer, semitrailer, or cargo all or any portion of
66 these towing, recovery, and storage costs.

67 § 43-33. Lien of mechanic for repairs.

68 Every mechanic, who shall alter or repair any article of personal property at the request of the owner
69 of such property, shall have a lien thereon for his just and reasonable charges therefor and may retain
70 possession of such property until such charges are paid.

71 And every mechanic, who shall make necessary alterations or repairs on any article of personal
72 property which from its character requires the making of ordinary repairs thereto as a reasonable
73 incident to its reasonable and customary use, at the request of any person legally in possession thereof
74 under a reservation of title contract, chattel mortgage, deed of trust, or other instrument securing money,
75 the person so in possession having authority to use such property, shall have a lien thereon for his just
76 and reasonable charges therefor to the extent of ~~\$500~~ 625. In addition, such mechanic shall be entitled
77 to a lien against the proceeds, if any, remaining after the satisfaction of all prior security interests or
78 liens, and may retain possession of such property until such charges are paid. In any action to enforce
79 the lien hereby given all persons having an interest in the property sought to be subjected shall be made
80 parties defendant.

81 If the owner of the property held by the mechanic shall desire to obtain possession thereof, he shall
82 make the mechanic defendant in proceeding in the county or municipal court to recover the property.

83 The owner may give a bond payable to the court, in a penalty of the amount equal to the lien
84 claimed by the mechanic and court costs, with security to be approved by the clerk, and conditioned for
85 the performance of the final judgment of the court on the trial of the proceeding, and with a further
86 condition to the effect that, if upon the hearing, the judgment of the court be that the lien of the
87 mechanic on such property, or any part thereof, be enforced, judgment may thereupon be entered against
88 the obligors on such bond for the amount due the mechanic and court costs, if assessed against the
89 owner, without further or other proceedings against them thereon. Upon giving of the bond, the property
90 shall be delivered to the owner.