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HOUSE BILL NO. 1265

Offered January 20, 2012

*A BILL to amend and reenact § 43-4 of the Code of Virginia, relating to mechanics' liens; notice.*Patron—Purkey

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 43-4 of the Code of Virginia is 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 90 days from the last day of the month in which he last performs labor or furnishes material, and in no event later than 90 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. A lien claimant who is a general contractor, and not lien claimants under §§ 43-7 and 43-9, also shall file along with the memorandum of lien, a certification of mailing of a copy of the memorandum of lien on the owner of the property at the owner's last known address. 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 10 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.

At least 60 days prior to filing a memorandum of lien pursuant to this section, a lien claimant shall send a copy of the memorandum and written notice of the lien claimant's intention to file the memorandum by certified mail, return receipt requested, to the owner of the property at the owner's last known address. After the expiration of this 60-day period, the lien claimant may file a memorandum of lien. The lien claimant shall also file with the clerk a copy of the written notice sent to the property owner and certify that such notice was sent. The clerk shall not accept or record any memorandum of lien filed prior to the expiration of this 60-day period or that is not accompanied by a copy of the notice sent to the property owner.

INTRODUCED

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