

MOLDBUILDER'S LIEN

House Bill 4812

Sponsor: Rep. Andrew Richner

Committee: Commerce

Complete to 10-8-01

A SUMMARY OF HOUSE BILL 4812 AS INTRODUCED 5-23-01

Public Act 155 of 1981 deals with the ownership of dies, molds, and forms used in the making of plastics. The act was amended in 1986 to give a "molder" a lien on any die, mold, or form in his or her possession that belonged to a customer of the molder. The lien is for the amount due to the molder from the customer for plastic fabrication work performed with the die, mold or form. The molder can retain possession of the die, mold, or form until the amount is paid. Before enforcing the lien, the molder must give written notice to the customer that the molder is claiming a lien for the amount due for plastic fabrication work or for making or improving the die, mold, or form. The notice must contain a demand for payment. The term "molder" is defined in the act to mean both 1) a person who fabricates, molds, casts, or otherwise makes a die, mold, or form for use in the manufacture, assembly, or fabrication of a plastic part and 2) a person who uses a die, mold, or form to manufacture, assemble, or fabricate a plastic product.

House Bill 4812 would make the first definition above apply to a new term, a "moldbuilder", and leave the second definition as the only one applying to the term "molder". Further, the bill would give a moldbuilder a lien on any die, mold, or form that he or she fabricated, repaired, or modified in the amount that a customer or a molder owed to the moldbuilder for that work. The current lien provisions in the act would continue to apply to a molder. The bill would create a new set of provisions regarding the lien of a moldbuilder.

Under the bill, a moldbuilder would be required to permanently record on every die, mold, or form that he or she fabricates, repairs, or modifies, the moldbuilder's name, street address, city, and state. The moldbuilder would then have a lien on any die, mold, or form so identified. The amount of the lien would be the amount owed by a customer or molder for the fabrication, repair, or modification of the die, mold, or form. The information recorded on the die, mold, or form would constitute actual and constructive notice of the lien. The lien would attach when actual or constructive notice was received. The moldbuilder would retain the lien even if the moldbuilder was not in physical possession of the mold, die, or form for which the lien was claimed.

The lien would remain valid until the moldbuilder was paid the amount owed by the customer or molder or until the customer received a verified statement from the molder that the molder had paid the amount owed. The priority of a lien created by the act on the same die, mold, or form would be determined by the time the lien attached. The first lien to attach would have priority over liens that attached after the first lien.

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To enforce a lien, the moldbuilder would give notice in writing to the molder and to the customer. The notice would have to be given by hand delivery or by certified mail, return receipt requested, to the last known address of the molder. The notice would have to state that a lien was being claimed, the amount the moldbuilder claimed it was owed, and a demand for payment. If the moldbuilder had not been paid the amount claimed in the notice within 90 days after it had been received by the customer and the molder, the moldbuilder would have a right to possession of the die, mold, or form and could enforce the right by judgment, foreclosure, or any available judicial procedure. The moldbuilder could take possession of the mold, die, or form (without judicial process if it could be done without a breach of the peace) or could sell the die, mold, or form at a public auction. A sale could not be made, however, if it would be in violation of any right of a customer or molder under federal patent or copyright law.

Before a moldbuilder could sell the die, mold, or form, he or she would have to notify the customer, the molder, and all other persons with a perfected security interest under the Uniform Commercial Code by certified mail, return receipt requested, of 1) the intention to sell 60 days after receipt of the notice; 2) a description of the die, mold, or form; 3) its last known location; 4) the time and place of the sale; 5) an itemized statement of the amount due; and 6) a statement that the die, mold, or form had been accepted and the acceptance had not subsequently been rejected. If there was no return of the receipt of the mailing or if the postal service returned the notice as undeliverable, the moldbuilder would have to publish a notice of the intention to sell in a newspaper of general circulation in the place where the die, mold, or form was known to be located, in the place of the customer's last known address, and in the place of the molder's last known address. The published notice would have to include a description of the die, mold, or form and the name of the customer and the molder. If a customer or molder disagreed that a die, mold, or form had been accepted or that the acceptance was not subsequently rejected, the customer or molder would have to notify the moldbuilder, who could then not sell the die, mold, or form until the dispute was resolved.

If the proceeds of the sale were greater than the amount of the lien, the proceeds would first be paid to the moldbuilder in an amount to satisfy the lien. All proceeds in excess of the lien would be paid to the customer.

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