



**House  
Legislative  
Analysis  
Section**

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## **SPECIAL TOOLS LIEN ACT**

**House Bill 5993 as introduced**  
**Sponsor: Rep. Andrew Richner**

**House Bill 5991 as introduced**  
**Sponsor: Rep. Charles LaSata**

**Committee: Commerce**  
**First Analysis (5-8-02)**

### ***THE APPARENT PROBLEM:***

Public Act 17 of 2002 (House Bill 4812 of the current legislative session) amended Public Act 155 of 1981, which deals with the ownership of dies, molds, and forms used in the making of plastics. The advocates for that legislation said that there was a need to provide additional protection to "moldbuilders", the firms that make the dies, molds, and forms that are used to make plastic parts. Public Act 17 provides moldbuilders with a lien on the dies, molds, and forms they make in the amount owed to them by a molder (the person who uses the die, mold, or form to manufacture parts) or by a customer (for whom the molders make the plastic parts). The law prior to Public Act 17 was said to have provided sufficient protection for molders but not for moldbuilders. Public Act 17, however, addressed only the fabrication of plastics. There are no similar statutory provisions for those engaged in metal fabrication. Legislation has been introduced that would provide the same kinds of protections for those in the metal fabrication sector as already exist for those engaged in plastic fabrication.

### ***THE CONTENT OF THE BILLS:***

House Bill 5993 would create a new act, the Special Tools Lien Act, which would address the ownership of tools, dies, jigs, gauges, gauging fixtures, special machinery, cutting tools, or metal castings manufactured by a special tool builder. The bill contains nearly identical provisions to those currently found in Public Act 155 of 1981, which deals with the ownership of dies, molds, and forms used in the making of plastics. House Bill 5993 would address special tools used in metal fabrication work.

House Bill 5991 would amend the Uniform Commercial Code to add the Special Tools Lien Act to the list of acts referred to in Article 9 of the code. Article 9 addresses the effectiveness and attachment of security interests. It specifies that a transaction

subject to the article is also subject to any applicable rule of law that establishes a different rule for consumers, and lists a large number of state laws. House Bill 5991 would add the new act, which House Bill 5993 proposes to create, to that list. House Bill 5991 is tie-barred to House Bill 5993.

House Bill 5993 would distinguish between a "special tool builder", a "customer", and an "end user". Under the bill, a special tool builder is a person who designs, develops, manufactures, or assembles special tools for sale. A customer is a person who causes a special tool builder to design, develop, manufacture, assemble for sale, or otherwise make a special tool for use in the design, development, manufacture, assembly, or fabrication of metal parts, or a person who causes an end user to use a special tool to design, develop, manufacture, assemble, or fabricate a metal product. An end user is a person who uses a special tool as part of his or her manufacturing process.

(These terms correspond to the terms "moldbuilder", "customer", and "molder" currently found in Public Act 155 of 1981 dealing with plastic fabrication. The provisions regarding the attachment and enforcement of liens in House Bill 5993 are nearly identical to those in Public Act 155 of 1981.)

In brief, the bill would contain the following provisions.

If a customer did not claim possession of a special tool from the end user within three years from its last use by the end user, all rights, title, and interest in the special tool could, at the option of the end user, be transferred by operation of law to the end user for the purpose of destroying the special tool. The bill spells out the process by which this would be accomplished, including written notice being sent to the customer, return receipt requested, indicating the end user's

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intention to terminate the customer's rights, title, and interest in the special tool. The customer would then have 120 days to claim possession or make other arrangements for storage.

- The end user would have a lien, dependent on possession, on any special tool belonging to a customer in the amount due the end user from the customer for metal fabrication work performed with the special tool. An end user could retain possession of the special tool until the amount due was paid. The bill spells out the process required for enforcing such a lien, including written notice that would have to be delivered personally or sent by registered mail to the customer of the lien being claimed and similar written notice of any intention by the end user to sell the special tool. A customer could disagree in writing with the lien notice provided, in which case the end user could not sell the special tool until the dispute was resolved.

- A special tool builder would be required to permanently record its name, street address, city, and state on every special tool that the builder fabricates, repairs, or modifies and would be required to file a financing statement in accordance with Section 9502 of the Uniform Commercial Code. Once a special tool was so identified, the special tool builder would have a lien on the special tool in the amount that a customer or an end user owed to the special tool builder for the fabrication, repair, or modification of the special tool. The information recorded on the special tool would constitute actual and constructive notice of the lien. The lien would attach when actual or constructive notice was received. The special tool builder would retain the lien even if the builder was not in physical possession of the special tool. The lien would remain in force until the amount owed was paid. The bill delineates the process to be followed for the special tool builder to enforce a lien, including written notice to the customer or end user given by hand delivery or certified mail, return receipt requested.

If the special tool builder had not been paid the amount claimed in the notice within 90 days after its receipt, the special tool builder would have a right to possession of the special tool and could enforce the right by judgment, foreclosure, or any available judicial procedure. The special tool builder could take possession of the special tool without judicial process if that could be done without breach of the peace or could sell the special tool at public auction. Before a special tool could be sold, however, written notice would have to be provided to the customer and end user, and to all other persons with a perfected security interest in the special tool under the Uniform Commercial Code by certified mail, return receipt

requested. If customer or end user disagreed with the special tool builder and disputed the sale, the special tool builder could not then sell the special tool until the dispute had been resolved.

### ***BACKGROUND INFORMATION:***

For a discussion of the issues surrounding the enactment of Public Act 17 of 2002, see the analysis of House Bills 4812 and 5382 by the House Legislative Analysis Section dated 11-27-01.

### ***FISCAL IMPLICATIONS:***

The House Fiscal Agency has pointed out that since the bills regulate the activities of private parties, they would have no fiscal impact on the state or on local governments. (HFA committee analyses dated 5-6-02)

### ***ARGUMENTS:***

#### ***For:***

Essentially, the bills would provide the same protections to special tool builders and end users of special tools in the metal fabrication sector as currently exist in state law for their counterparts in the plastic fabrication sector. Among other things, they provide protection by allowing liens to be imposed on valuable and specially designed and created products used in manufacturing in order to help collect amounts owed for the creation or use of the so-called special tools. The language in House Bill 5993 is virtually identical to the provisions currently found in Public Act 155 of 1981, which applies only to dies, molds, and forms used in the manufacture, assembly, or fabrication of plastics. (That act has been amended during the current legislative session, and House Bill 5993 reflects those amendments.) The bills under consideration would apply to special tools (such as tools, dies, jigs, gauges, gauging fixtures, special machinery, cutting tools, and metal castings) used in metal fabricating.

### ***POSITIONS:***

A representative of the Michigan Tooling Association testified in support of the bill before the House Committee on Commerce. (5-7-02)

Analyst: C. Couch

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.