

SPECIAL TOOLS LIEN ACT

House Bill 5993

Sponsor: Rep. Andrew Richner

House Bill 5991

Sponsor: Rep. Charles LaSata

Committee: Commerce

Complete to 5-3-02

A SUMMARY OF HOUSE BILLS 5993 AND 5991 AS INTRODUCED 5-2-02

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 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.

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