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SFA**BILL ANALYSIS**

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House Bill 4812 (Substitute H-2 as passed by the House)

House Bill 5382 (as passed by the House)

Sponsor: Representative Mickey Mortimer

House Committee: Commerce

Senate Committee: Financial Services

Date Completed: 2-4-02

CONTENT

House Bill 4812 (H-2) would amend Public Act 155 of 1981, which provides for ownership rights in dies, molds, and forms used in making plastics, to establish the lien of a "moldbuilder" and provide procedures for enforcing the lien.

House Bill 5382 would amend Article 9, Part 2 of the Universal Commercial Code (UCC) to provide that transactions subject to the article would be subject to Public Act 155 of 1981. The bill is tie-barred to House Bill 4812.

House Bill 4812 (H-2)

Molder's Lien

Public Act 155 of 1981 specifies that a molder maintains a lien on any die, mold, or form in his or her possession that belongs to a customer of the molder. The bill would retain the lien provisions that apply to a molder. The current Act defines "molder" both as a person who makes dies, molds, and forms, and as a person who uses them to manufacture, assemble, or fabricate a plastic product. Under the bill, a molder would be limited to a person who *uses* a die, mold, or form to manufacture, assemble, or fabricate plastic parts.

Moldbuilder Lien

The bill would define "moldbuilder" as a person who *fabricated, cast, or otherwise made, repaired, or modified* a die, mold, or form for use in the manufacture, assembly, or fabrication of plastic parts. Under the bill, a moldbuilder would have a lien on any die, mold, or form that he or she fabricated, repaired, or modified. The amount of the moldbuilder's lien would be the amount that a customer or molder owed the moldbuilder for the fabrication, repair, or modification of the die, mold, or form.

The bill would require a moldbuilder permanently to record his or her name, street address, city, and state on every die, mold, or form he or she fabricated, repaired, or modified. In addition, a moldbuilder would have to file a financing statement in accordance with Section 9502 of the UCC, which prescribes the contents of a financing statement. The bill specifies that the information that the moldbuilder would have to record on the die, mold, or form, as well as the required financing statement, would constitute actual and constructive notice of the moldbuilder's lien on the die, mold, or form.

The bill further specifies that the moldbuilder's lien would attach (become enforceable against the debtor) when actual or constructive notice was received. The moldbuilder would retain the lien even if the moldbuilder were not in physical possession of the die, mold, or form. The lien

would remain valid until the moldbuilder was paid the amount owned by the customer or molder, the customer received a verified statement from the molder that the molder had paid the amount of the lien, or the financing statement was terminated, whichever occurred first.

The priority of a lien (against other creditors) on a 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 subsequent to the first lien.

Enforcement

To enforce a lien, the moldbuilder would have to give written notice to the customer and the molder. The notice would have to be delivered by hand or certified mail, return receipt requested, to the last known address of the customer and the molder. The notice would have to state that a lien was claimed, the amount the moldbuilder claimed was owned for fabrication, repair, or modification, and a demand for payment.

If, after 90 days, the moldbuilder had not been paid, he or she 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. At that point, the moldbuilder could take possession of the mold, die, or form (without judicial process, if this could be done without breach of the peace); and/or sell the die, mold, or form in a public auction. Before selling it, however, the moldbuilder would have to notify the customer, the molder, and all others with a perfected security interest in the die, mold, or form under Article 9, Part 5 of the UCC, by certified mail, return receipt requested of all of the following:

- The moldbuilder's intention to sell the die, mold, or form 60 days after the receipt of the notice.
- A description of the die, mold, or form to be sold.
- The last known location of the die, mold, or form.
- The time and place of the sale.
- An itemized statement of the amount due.
- A statement that the die, mold, or form was accepted and that the acceptance was not subsequently rejected.

If there were no return of the receipt of the mailing, or if the postal service returned the notice as nondeliverable, the moldbuilder would have to publish notice of the moldbuilder's intention to sell the die, mold, or form in a newspaper of general circulation in the place where the die, mold, or form was last 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 the customer or molder against whom the lien was asserted disagreed that the die, mold, or form was accepted or that the acceptance was not subsequently rejected, the customer or molder would have to notify the moldbuilder in writing by certified mail, return receipt requested, that the die, mold, or form was not accepted or that the acceptance was subsequently rejected. The moldbuilder then could not sell the die, mold, or form until the dispute was resolved.

Other Provisions

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

A sale could not be made, or possession could not be obtained, if it would violate any right of a customer or holder under Federal patent, bankruptcy, or copyright law.

House Bill 5382

Article 9 of the UCC governs secured transactions (which involve the granting of credit coupled with the creditor's interest in the debtor's personal property). Part 2 specifies that a transaction under the article is subject to any applicable rule of law that establishes a different rule for consumers, as well as specified State laws. The bill would add Public Act 155 of 1981 to the list of laws to which security transactions are subject.

MCL 445.611 et al. (H.B. 4812)
440.9201 (H.B. 5382)

Legislative Analyst: Claire Layman

FISCAL IMPACT

The bills would have no fiscal impact on State or local government.

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