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SFA**BILL ANALYSIS**

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House Bills 5991 and 5993 (as passed by the House)
Sponsor: Representative Charles LaSata (H.B. 5991)
Representative Andrew Richner (H.B. 5993)
House Committee: Commerce
Senate Committee: Financial Services

Date Completed: 5-23-02

CONTENT

House Bill 5991 would amend Article 9 (Secured Transactions) of the Uniform Commercial Code to provide that transactions subject to the article would be subject to the Special Tools Lien Act (proposed by House Bill 5993). The bill is tie-barred to House Bill 5993.

House Bill 5993 would create the "Special Tools Lien Act" to:

- Provide for an end user's ownership rights in a special tool, for the purpose of destroying it, if a customer did not claim possession of the tool.
- Establish the lien of an end user for the amount due from a customer.
- Establish the lien of a special tool builder for the amount owed by an end user or a customer.
- Provide procedures for enforcing lien and selling a special tool at a public auction if an amount due were not paid.

The bill would define "special tool" as any tools, dies, jigs, gauges, gauging fixtures, special machinery, cutting tools, or metal castings manufactured by the special tool builder. "Special tool builder" would mean a person who designed, developed, manufactured, or assembled special tools for sale. "End user" would mean a person who used a special tool as part of his or her manufacturing process.

"Customer" would mean a person who caused 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 caused an end user to use a special tool to design, develop, manufacture, assemble, or fabricate a metal product.

House Bill 5993

End User

Ownership Rights. If a customer did not claim possession of a special tool from an 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 purpose of destroying the special tool. The end user would have to send by registered mail a written notice to the customer's last known address, indicating the end user's intent to terminate the customer's rights, title, and interest in the special tool and transfer the rights, title, and interest to the end user. The three-year waiting period would apply retroactively in the case of a special tool in the possession of an end user on the bill's effective date.

If the customer did not claim possession of the special tool within 120 days after the notice or did not make other arrangements with the end user for storage of the special tool, all rights, title, and interest of the customer would be transferred by operation of law to the end user for the purpose of destroying the special tool. This provision could not be construed to affect a right of a customer under Federal patent or copyright law or any State or Federal law pertaining to unfair competition.

These provisions would not apply if an end user retained title to and possession of a special tool. In addition, these provisions could not be construed to grant a customer rights, title, or interest in a special tool.

Lien. An end user would have a lien, dependent on possession, on any special tool in the end user's possession belonging to a customer for 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.

Enforcement. Before enforcing a lien, written notice would have to be given to the customer by personal delivery or registered mail. The notice would have to state that a lien was claimed for the amount due for metal fabrication work or for making or improving the special tool. The notice would have to include a demand for payment.

If the customer had not paid the amount due within 60 days after receiving the notice, the end user could sell the special tool at a public auction if the tool were still in the end user's possession and the end user complied with the following requirements.

Before selling the special tool, the end user would have to give written notice to the customer and any person whose security interest was perfected by filing. The notice would have to be sent by registered mail, return receipt requested, and include the end user's intention to sell the special tool 60 days after the customer's receipt of the notice, a description of the special tool to be sold, the time and place of the sale, an itemized statement for the amount due, and a statement that the product produced by the special tool complied with the quality and quantity ordered.

If there were no return of the receipt of the mailing, or if the postal service returned the notice as nondeliverable, the end user would have to publish notice of the end user's intention to sell the special tool in a newspaper of general circulation in the place where the special tool was being held for sale and in the place of the customer's last known address. The published notice would have to include a description of the special tool and the name of the customer.

If the customer disagreed with the notice, the customer would have to notify the end user in writing by registered mail, return receipt requested, that the product produced by the special tool did not meet the quality or quantity ordered. The end user then could not sell the special tool until the dispute was resolved.

Sale. If the sale proceeds were greater than the amount of the lien, the proceeds would first have to be paid to the lienholder in the amount necessary to satisfy that lien. Any excess would be paid to the end user who possessed a lien to satisfy that lien. Any remainder would have to be paid to the customer.

Special Tool Builder

Lien. A special tool builder would be required to record permanently its name, street address, city, and state on every special tool that the builder fabricated, repaired, or modified, and would have to file a financing statement in accordance with 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 and the financing statement 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 were not in physical possession of the special tool. The lien would remain valid until the special tool builder was paid the amount owed by the customer or end user, the customer received a verified statement from the end user that the end user had paid the amount of the lien, or the financing statement was terminated, whichever occurred first.

The priority of a lien on a special tool 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 special tool builder would have to give written notice to the customer and the end user. The notice would have to be delivered by hand or certified mail, return receipt requested, to the last known address of the end user and of the customer. The notice would have to state that a lien was claimed, the amount the special tool builder claimed was owed for fabrication, repair, or modification, and a demand for payment.

If, after 90 days, the special tool builder had not been paid, the builder would have a right to possession of the special tool, and could enforce the right by judgment, foreclosure, or any available judicial procedure. At that point, the special tool builder could take possession of the special tool (without judicial process, if this could be done without breach of the peace); and/or sell the special tool in a public auction. Before selling it, however, the special tool builder would have to notify the customer, end user, and all others with a perfected security interest in the special tool under Article 9, Part 5 of the UCC, by certified mail, return receipt requested of all of the following:

- The special tool builder's intention to sell the special tool 60 days after the receipt of the notice.
- A description of the special tool to be sold.
- The last known location of the special tool.
- The time and place of the sale.
- An itemized statement of the amount due.
- A statement that the special tool 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 special tool builder would have to publish notice of the special tool builder's intention to sell the special tool in a newspaper of general circulation in the place where the special tool was last known to be located, in the place of the customer's last known address, and in the place of the end user's last known address. The published notice would have to include a description of the special tool and the name of the customer and the end user.

If the customer or end user against whom the lien was asserted disagreed that the special tool was accepted or that the acceptance was not subsequently rejected, the customer or end user would have to notify the special tool builder in writing by certified mail, return receipt requested, that the special tool was not accepted or that the acceptance was subsequently rejected. The special tool builder then could not sell the special tool until the dispute was resolved.

Sale. If the sale proceeds were greater than the amount of the lien, the proceeds would first have to be paid to the special tool builder in the amount necessary satisfy that 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 5991

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 the Special Tools Lien Act to the list of laws to which security transactions are subject.

MCL 440.9201 (H.B. 5991)

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FISCAL IMPACT

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

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