

REPRINT

SUBSTITUTE FOR

HOUSE BILL NO. 4812

(As passed the House, November 29, 2001)
(As passed the Senate, February 13, 2002)

A bill to amend 1981 PA 155, entitled

"An act to provide for ownership rights in dies, molds, and forms for use in the fabrication of plastic parts under certain conditions and to establish a lien on certain dies, molds, and forms," by amending sections 1 and 8a (MCL 445.611 and 445.618a), section 8a as added by 1986 PA 103, and by adding sections 9, 10, 10a, 10b, and 10c.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. For purposes of this act:

2 (a) "Customer" means a person who causes a ~~molder~~
3 MOLDBUILDER to fabricate, cast, or otherwise make a die, mold, or
4 form for use in the manufacture, assembly, or fabrication of ~~a~~
5 plastic ~~product~~ PARTS, or a person who causes a molder to use a
6 die, mold, or form to manufacture, assemble, or fabricate a
7 plastic product.

HB 4812, As Passed Senate, February 13, 2002

House Bill No. 4812

2

1 (B) "MOLDBUILDER" MEANS A PERSON WHO FABRICATES, CASTS, OR
2 OTHERWISE MAKES, REPAIRS, OR MODIFIES A DIE, MOLD, OR FORM FOR
3 USE IN THE MANUFACTURE, ASSEMBLY, OR FABRICATION OF PLASTIC
4 PARTS.

5 (C) ~~-(b)-~~ "Molder" means a person who ~~fabricates, molds,~~
6 ~~casts, or otherwise makes a die, mold, or form for use in the~~
7 ~~manufacture, assembly, or fabrication of a plastic part or a~~
8 ~~person who~~ uses a die, mold, or form to manufacture, assemble,
9 or fabricate ~~a~~ plastic ~~product~~ PARTS.

10 (D) ~~-(c)-~~ "Person" means an individual, firm, partnership,
11 association, ~~or~~ corporation, LIMITED LIABILITY COMPANY, OR
12 OTHER LEGAL ENTITY.

13 Sec. 8a. Before enforcing a lien ~~under this act~~ GRANTED
14 TO A MOLDER UNDER SECTION 8, notice in writing shall be given to
15 the customer, whether delivered personally or sent by registered
16 mail to the last known address of the customer. The notice shall
17 state that a lien is claimed for the amount due for plastic fab-
18 rication work or for making or improving the die, mold, or form.
19 The notice shall include a demand for payment.

20 SEC. 9. (1) A MOLDBUILDER SHALL PERMANENTLY RECORD ON EVERY
21 DIE, MOLD, OR FORM THAT THE MOLDBUILDER FABRICATES, REPAIRS, OR
22 MODIFIES THE MOLDBUILDER'S NAME, STREET ADDRESS, CITY, AND
23 STATE.

24 (2) A MOLDBUILDER SHALL FILE A FINANCING STATEMENT IN
25 ACCORDANCE WITH THE REQUIREMENTS OF SECTION 9502 OF THE UNIFORM
26 COMMERCIAL CODE, 1962 PA 174, MCL 440.9502.

HB 4812, As Passed Senate, February 13, 2002

House Bill No. 4812

3

1 (3) A MOLDBUILDER HAS A LIEN ON ANY DIE, MOLD, OR FORM
2 IDENTIFIED PURSUANT TO SUBSECTION (1). THE AMOUNT OF THE LIEN IS
3 THE AMOUNT THAT A CUSTOMER OR MOLDER OWES THE MOLDBUILDER FOR THE
4 FABRICATION, REPAIR, OR MODIFICATION OF THE DIE, MOLD, OR FORM.
5 THE INFORMATION THAT THE MOLDBUILDER IS REQUIRED TO RECORD ON THE
6 DIE, MOLD, OR FORM UNDER SUBSECTION (1) AND THE FINANCING STATE-
7 MENT REQUIRED UNDER SUBSECTION (2) SHALL CONSTITUTE ACTUAL AND
8 CONSTRUCTIVE NOTICE OF THE MOLDBUILDER'S LIEN ON THE DIE, MOLD,
9 OR FORM.

10 (4) THE MOLDBUILDER'S LIEN ATTACHES WHEN ACTUAL OR CONSTRUC-
11 TIVE NOTICE IS RECEIVED. THE MOLDBUILDER RETAINS THE LIEN THAT
12 ATTACHES UNDER THIS SECTION EVEN IF THE MOLDBUILDER IS NOT IN
13 PHYSICAL POSSESSION OF THE DIE, MOLD, OR FORM FOR WHICH THE LIEN
14 IS CLAIMED.

15 (5) THE LIEN REMAINS VALID UNTIL THE FIRST OF THE FOLLOWING
16 EVENTS TAKES PLACE:

17 (A) THE MOLDBUILDER IS PAID THE AMOUNT OWED BY THE CUSTOMER OR
18 MOLDER.

19 (B) THE CUSTOMER RECEIVES A VERIFIED STATEMENT FROM THE MOLDER THAT
THE MOLDER HAS PAID THE AMOUNT FOR WHICH THE LIEN IS CLAIMED.

 (C) THE FINANCING STATEMENT IS TERMINATED.

20 (6) THE PRIORITY OF A LIEN CREATED UNDER THIS ACT ON THE
21 SAME DIE, MOLD, OR FORM SHALL BE DETERMINED BY THE TIME THE LIEN
22 ATTACHES. THE FIRST LIEN TO ATTACH SHALL HAVE PRIORITY OVER
23 LIENS THAT ATTACH SUBSEQUENT TO THE FIRST LIEN.

24 SEC. 10. TO ENFORCE A LIEN THAT ATTACHES UNDER SECTION 9,
25 THE MOLDBUILDER SHALL GIVE NOTICE IN WRITING TO THE CUSTOMER AND
26 THE MOLDER. THE NOTICE SHALL BE GIVEN BY HAND DELIVERY OR
27 CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE LAST KNOWN

HB 4812, As Passed Senate, February 13, 2002

House Bill No. 4812

4

1 ADDRESS OF THE CUSTOMER AND TO THE LAST KNOWN ADDRESS OF THE
2 MOLDER. THE NOTICE SHALL STATE THAT A LIEN IS CLAIMED, THE
3 AMOUNT THAT THE MOLDBUILDER CLAIMS IT IS OWED FOR FABRICATION,
4 REPAIR, OR MODIFICATION OF THE DIE, MOLD, OR FORM, AND A DEMAND
5 FOR PAYMENT.

6 SEC. 10A. SUBJECT TO SECTION 10B, IF THE MOLDBUILDER HAS
7 NOT BEEN PAID THE AMOUNT CLAIMED IN THE NOTICE REQUIRED UNDER
8 SECTION 10 WITHIN 90 DAYS AFTER THE NOTICE REQUIRED UNDER SECTION
9 10 HAS BEEN RECEIVED BY THE CUSTOMER AND THE MOLDER, THE
10 MOLDBUILDER HAS A RIGHT TO POSSESSION OF THE DIE, MOLD, OR FORM
11 AND MAY ENFORCE THE RIGHT TO POSSESSION OF THE DIE, MOLD, OR FORM
12 BY JUDGMENT, FORECLOSURE, OR ANY AVAILABLE JUDICIAL PROCEDURE.
13 THE MOLDBUILDER MAY DO 1 OR MORE OF THE FOLLOWING:

14 (A) TAKE POSSESSION OF THE MOLD, DIE, OR FORM. THE
15 MOLDBUILDER MAY TAKE POSSESSION WITHOUT JUDICIAL PROCESS IF THIS
16 CAN BE DONE WITHOUT BREACH OF THE PEACE.

17 (B) SELL THE DIE, MOLD, OR FORM IN A PUBLIC AUCTION.

18 SEC. 10B. (1) BEFORE A MOLDBUILDER MAY SELL A DIE, MOLD, OR
19 FORM FOR WHICH A LIEN IS CLAIMED AND FOR WHICH THE REQUIRED
20 NOTICE HAS BEEN SENT UNDER SECTION 10, THE MOLDBUILDER SHALL
21 NOTIFY THE CUSTOMER, THE MOLDER, AND ALL OTHER PERSONS THAT HAVE
22 A PERFECTED SECURITY INTEREST IN THE DIE, MOLD, OR FORM UNDER
23 PART 5 OF ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE, 1962 PA 174,
24 MCL 440.9501 TO 440.9527, BY CERTIFIED MAIL, RETURN RECEIPT
25 REQUESTED, OF ALL OF THE FOLLOWING:

26 (A) THE MOLDBUILDER'S INTENTION TO SELL THE DIE, MOLD, OR
27 FORM 60 DAYS AFTER THE RECEIPT OF THE NOTICE.

HB 4812, As Passed Senate, February 13, 2002

House Bill No. 4812

5

1 (B) A DESCRIPTION OF THE DIE, MOLD, OR FORM TO BE SOLD.

2 (C) THE LAST KNOWN LOCATION OF THE DIE, MOLD, OR FORM.

3 (D) THE TIME AND PLACE OF THE SALE.

4 (E) AN ITEMIZED STATEMENT OF THE AMOUNT DUE.

5 (F) A STATEMENT THAT THE DIE, MOLD, OR FORM WAS ACCEPTED AND
6 THE ACCEPTANCE WAS NOT SUBSEQUENTLY REJECTED.

7 (2) IF THERE IS NO RETURN OF THE RECEIPT OF THE MAILING OR
8 IF THE POSTAL SERVICE RETURNS THE NOTICE AS BEING NONDELIVERABLE,
9 THE MOLDBUILDER SHALL PUBLISH NOTICE OF THE MOLDBUILDER'S INTEN-
10 TION TO SELL THE DIE, MOLD, OR FORM IN A NEWSPAPER OF GENERAL
11 CIRCULATION IN THE PLACE WHERE THE DIE, MOLD, OR FORM IS LAST
12 KNOWN TO BE LOCATED, IN THE PLACE OF THE CUSTOMER'S LAST KNOWN
13 ADDRESS, AND IN THE PLACE OF THE MOLDER'S LAST KNOWN ADDRESS.
14 THE PUBLISHED NOTICE SHALL INCLUDE A DESCRIPTION OF THE DIE,
15 MOLD, OR FORM AND THE NAME OF THE CUSTOMER AND THE MOLDER.

16 (3) IF A CUSTOMER OR MOLDER AGAINST WHOM THE LIEN IS
17 ASSERTED DISAGREES THAT THE DIE, MOLD, OR FORM WAS ACCEPTED OR
18 THAT THE ACCEPTANCE WAS NOT SUBSEQUENTLY REJECTED, THE CUSTOMER
19 OR MOLDER SHALL NOTIFY THE MOLDBUILDER IN WRITING BY CERTIFIED
20 MAIL, RETURN RECEIPT REQUESTED, THAT THE DIE, MOLD, OR FORM WAS
21 NOT ACCEPTED OR THAT THE ACCEPTANCE WAS SUBSEQUENTLY REJECTED. A
22 MOLDBUILDER WHO RECEIVES THIS NOTICE SHALL NOT SELL THE DIE,
23 MOLD, OR FORM UNTIL THE DISPUTE IS RESOLVED.

24 SEC. 10C. (1) IF THE PROCEEDS OF THE SALE ARE GREATER THAN
25 THE AMOUNT OF THE LIEN, THE PROCEEDS SHALL FIRST BE PAID TO THE
26 MOLDBUILDER IN THE AMOUNT NECESSARY TO SATISFY THE LIEN. ALL
27 PROCEEDS IN EXCESS OF THE LIEN SHALL BE PAID TO THE CUSTOMER.

HB 4812, As Passed Senate, February 13, 2002

House Bill No. 4812

6

1 (2) A SALE SHALL NOT BE MADE OR POSSESSION SHALL NOT BE
2 OBTAINED UNDER SECTION 10A IF IT WOULD BE IN VIOLATION OF ANY
3 RIGHT OF A CUSTOMER OR MOLDER UNDER FEDERAL PATENT, BANKRUPTCY,
4 OR COPYRIGHT LAW.