

HOUSE BILL No. 5993

(As passed the Senate, June 6, 2002)

May 2, 2002, Introduced by Reps. Richner, LaSata, Faunce, Palmer, DeVuyst and Lemmons and referred to the Committee on Commerce.

A bill to provide for and establish possession and ownership rights in special tools for use in the fabrication of metal parts under certain conditions; to require procedures to establish a lien; and to establish and maintain a lien on certain special tools.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "special tools lien act".

3 Sec. 2. For purposes of this act:

4 (a) "Customer" means a person who causes a special tool
5 builder to design, develop, manufacture, assemble for sale, or
6 otherwise make a special tool for use in the design, development,
7 manufacture, assembly, or fabrication of metal parts, or a person
8 who causes an end user to use a special tool to design, develop,
9 manufacture, assemble, or fabricate a metal product.

1 (b) "End user" means a person who uses a special tool as
2 part of his or her manufacturing process.

3 (c) "Special tool" means any tools, dies, jigs, gauges,
4 gauging fixtures, special machinery, cutting tools, or metal
5 castings manufactured by a special tool builder.

6 (d) "Special tool builder" means a person who designs,
7 develops, manufactures, or assembles special tools for sale.

8 (e) "Person" means an individual, firm, partnership, associ-
9 ation, corporation, limited liability company, or other legal
10 entity.

11 Sec. 3. Unless otherwise agreed in writing, if a customer
12 does not claim possession of a special tool from the end user
13 within 3 years from the last use with that end user of the spe-
14 cial tool, all rights, title, and interest in the special tool
15 may, at the option of the end user, be transferred by operation
16 of law to the end user for purpose of destroying the special
17 tool.

18 Sec. 5. After the expiration of the 3-year period set forth
19 in section 3, if an end user chooses to have all rights, title,
20 and interest in a special tool transferred to the end user by
21 operation of law, the end user shall send written notice by reg-
22 istered mail, return receipt requested, to an address designated
23 in writing by the customer, or if not so designated, to the
24 customer's last known address, indicating that the end user
25 intends to terminate the customer's rights, title, and interest
26 in the special tool, by having all rights, title, and interest in

1 the special tool transferred to the end user by operation of law,
2 under this act.

3 Sec. 7. If a customer does not claim possession of the spe-
4 cial tool within 120 days after the date the end user receives
5 the return receipt of the notice sent under section 5, or does
6 not make other arrangements with the end user for storage of the
7 special tool within the time limit set forth in this section, all
8 rights, title, and interest of the customer in the special tool
9 shall be transferred by operation of law to the end user for pur-
10 poses of destroying the special tool. This section shall not be
11 construed to affect a right of a customer under federal patent or
12 copyright law or any state or federal law pertaining to unfair
13 competition.

14 Sec. 9. The 3-year waiting period provided in section 3
15 shall apply retroactively in the case of a special tool in the
16 possession of an end user on the effective date of this act.

17 Sec. 11. Sections 3, 5, 7, and 9 shall not apply if an end
18 user retains title to and possession of a special tool.
19 Sections 3, 5, 7, and 9 shall not be construed to grant a cus-
20 tomer rights, title, or interest in a special tool.

21 Sec. 13. An end user has a lien, dependent on possession,
22 on any special tool in the end user's possession belonging to a
23 customer for the amount due the end user from the customer for
24 metal fabrication work performed with the special tool. An end
25 user may retain possession of the special tool until the amount
26 due is paid.

1 Sec. 15. Before enforcing a lien granted to an end user
2 under section 13, notice in writing shall be given to the
3 customer, delivered personally or sent by registered mail to the
4 last known address of the customer. The notice shall state that
5 a lien is claimed for the amount due for metal fabrication work
6 or for making or improving the special tool. The notice shall
7 include a demand for payment.

8 Sec. 17. If the end user has not been paid the amount due
9 within 90 days after the notice has been received by the customer
10 provided in section 15, the end user may sell the special tool at
11 a public auction if both of the following occur:

12 (a) The special tool is still in the end user's possession.

13 (b) The end user complies with section 19.

14 Sec. 19. (1) Before an end user may sell the special tool,
15 the end user shall notify, by registered mail, return receipt
16 requested, the customer and any person whose security interest is
17 perfected by filing. The notice shall include the following
18 information:

19 (a) The end user's intention to sell the special tool
20 60 days after the customer's receipt of the notice.

21 (b) A description of the special tool to be sold.

22 (c) The time and place of the sale.

23 (d) An itemized statement for the amount due.

24 (e) A statement that the product produced by the special
25 tool complies with the quality and quantity ordered.

26 (2) If there is not a return of the receipt of the mailing
27 or if the postal service returns the notice as being

1 nondeliverable, the end user shall publish notice of the end
2 user's intention to sell the special tool in a newspaper of gen-
3 eral circulation in the place where the special tool is being
4 held for sale by the end user and in the place of the customer's
5 last known address. The notice shall include a description of
6 the special tool and the name of the customer.

7 (3) If a customer disagrees with the notice described in
8 subsection (1), the customer shall notify the end user in writing
9 by registered mail, return receipt requested, that the product
10 produced by the special tool did not meet the quality or quantity
11 ordered. An end user who receives this notice shall not sell the
12 special tool until the dispute is resolved.

13 Sec. 21. (1) If the sale is for a sum greater than the
14 amount of the lien, the proceeds shall first be paid to the prior
15 lienholder who has a perfected lien in an amount sufficient to
16 extinguish that interest. Any excess shall next be paid to the
17 end user who possesses a lien under this act in an amount suffi-
18 cient to extinguish that interest. Any remainder shall then be
19 paid to the customer.

20 (2) A sale shall not be made under this act if it would be
21 in violation of any right of a customer under federal patent or
22 copyright law.

23 Sec. 23. (1) A special tool builder shall permanently
24 record on every special tool that the special tool builder fabri-
25 cates, repairs, or modifies the special tool builder's name,
26 street address, city, and state.

1 (2) A special tool builder shall file a financing statement
2 in accordance with the requirements of section 9502 of the
3 uniform and commercial code, 1962 PA 174, MCL 440.9502.

4 (3) A special tool builder has a lien on any special tool
5 identified pursuant to subsection (1). The amount of the lien is
6 the amount that a customer or end user owes the special tool
7 builder for the fabrication, repair, or modification of the spe-
8 cial tool. The information that the special tool builder is
9 required to record on the special tool under subsection (1) and
10 the financing statement required under subsection (2) shall con-
11 stitute actual and constructive notice of the special tool
12 builder's lien on the special tool.

13 (4) The special tool builder's lien attaches when actual or
14 constructive notice is received. The special tool builder
15 retains the lien that attaches under this section even if the
16 special tool builder is not in physical possession of the special
17 tool for which the lien is claimed.

18 (5) The lien remains valid until the first of the following
19 events takes place:

20 (a) The special tool builder is paid the amount owed by the
21 customer or end user.

22 (b) The customer receives a verified statement from the end
23 user that the end user has paid the amount for which the lien is
24 claimed.

25 (c) The financing statement is terminated.

26 (6) The priority of a lien created under this act on a
27 special tool shall be determined by the time the lien attaches.

1 The first lien to attach shall have priority over liens that
2 attach subsequent to the first lien.

3 Sec. 25. To enforce a lien that attaches under section 23,
4 the special tool builder shall give notice of the lien in writing
5 to the customer and the end user. The notice shall be given by
6 hand delivery or certified mail, return receipt requested, to the
7 last known address of the customer and to the last known address
8 of the end user. The notice shall state that a lien is claimed,
9 the amount that the special tool builder claims it is owed for
10 fabrication, repair, or modification of the special tool, and a
11 demand for payment.

12 Sec. 27. Subject to section 29, if the special tool builder
13 has not been paid the amount claimed in the notice required under
14 section 25 within 90 days after the notice required under
15 section 25 has been received by the customer and the end user,
16 the special tool builder has a right to possession of the special
17 tool and may enforce the right to possession of the special tool
18 by judgment, foreclosure, or any available judicial procedure.
19 The special tool builder may do 1 or more of the following:

20 (a) Take possession of the special tool. The special tool
21 builder may take possession without judicial process if this can
22 be done without breach of the peace.

23 (b) Sell the special tool in a public auction.

24 Sec. 29. (1) Before a special tool builder may sell a spe-
25 cial tool for which a lien is claimed and for which the required
26 notice has been sent under section 25, the special tool builder
27 shall notify the customer, the end user, and all other persons

1 that have a perfected security interest in the special tool under
2 part 5 of article 9 of the uniform commercial code, 1962 PA 174,
3 MCL 440.9501 to 440.9527, by certified mail, return receipt
4 requested, of all of the following:

5 (a) The special tool builder's intention to sell the special
6 tool 60 days after the receipt of the notice.

7 (b) A description of the special tool to be sold.

8 (c) The last known location of the special tool.

9 (d) The time and place of the sale.

10 (e) An itemized statement of the amount due.

11 (f) A statement that the special tool was accepted and the
12 acceptance was not subsequently rejected.

13 (2) If there is no return of the receipt of the mailing or
14 if the postal service returns the notice as being nondeliverable,
15 the special tool builder shall publish notice of the special tool
16 builder's intention to sell the special tool in a newspaper of
17 general circulation in the place where the special tool is last
18 known to be located, in the place of the customer's last known
19 address, and in the place of the end user's last known address.
20 The published notice shall include a description of the special
21 tool and the name of the customer and the end user.

22 (3) If a customer or end user against whom the lien is
23 asserted disagrees that the special tool was accepted or that the
24 acceptance was not subsequently rejected, the customer or end
25 user shall notify the special tool builder in writing by certi-
26 fied mail, return receipt requested, that the special tool was
27 not accepted or that the acceptance was subsequently rejected. A

1 special tool builder who receives this notice shall not sell the
2 special tool until the dispute is resolved.

3 Sec. 31. (1) If the proceeds of the sale are greater than
4 the amount of the lien, the proceeds shall first be paid to the
5 special tool builder in the amount necessary to satisfy the
6 lien. All proceeds in excess of the lien shall be paid to the
7 customer.

8 (2) A sale shall not be made or possession shall not be
9 obtained under section 27 if it would be in violation of any
10 right of a customer or end user under federal patent, bankruptcy,
11 or copyright law.