

Act No. 481
Public Acts of 2002
Approved by the Governor
June 27, 2002
Filed with the Secretary of State
June 27, 2002
EFFECTIVE DATE: June 27, 2002

**STATE OF MICHIGAN
91ST LEGISLATURE
REGULAR SESSION OF 2002**

Introduced by Reps. Richner, LaSata, Faunce, Palmer, DeVuyst and Lemmons

ENROLLED HOUSE BILL No. 5993

AN ACT 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:

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

Sec. 2. For purposes of this act:

(a) “Customer” means 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.

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

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

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

(e) “Person” means an individual, firm, partnership, association, corporation, limited liability company, or other legal entity.

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

Sec. 5. After the expiration of the 3-year period set forth in section 3, if an end user chooses to have all rights, title, and interest in a special tool transferred to the end user by operation of law, the end user shall send written notice by registered mail, return receipt requested, to an address designated in writing by the customer, or if not so designated, to the customer’s last known address, indicating that the end user intends to terminate the customer’s rights, title, and interest in the special tool, by having all rights, title, and interest in the special tool transferred to the end user by operation of law, under this act.

Sec. 7. If a customer does not claim possession of the special tool within 120 days after the date the end user receives the return receipt of the notice sent under section 5, or does not make other arrangements with the end user for storage of the special tool within the time limit set forth in this section, all rights, title, and interest of the customer in the special tool shall be transferred by operation of law to the end user for purposes of destroying the special tool. This section shall 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.

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

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

Sec. 13. An end user has 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 may retain possession of the special tool until the amount due is paid.

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

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

- (a) The special tool is still in the end user's possession.
- (b) The end user complies with section 19.

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

- (a) The end user's intention to sell the special tool 60 days after the customer's receipt of the notice.
- (b) A description of the special tool to be sold.
- (c) The time and place of the sale.
- (d) An itemized statement for the amount due.
- (e) A statement that the product produced by the special tool complies with the quality and quantity ordered.

(2) If there is not a return of the receipt of the mailing or if the postal service returns the notice as being nondeliverable, the end user shall 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 is being held for sale by the end user and in the place of the customer's last known address. The notice shall include a description of the special tool and the name of the customer.

(3) If a customer disagrees with the notice described in subsection (1), the customer shall 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. An end user who receives this notice shall not sell the special tool until the dispute is resolved.

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

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

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

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

(3) A special tool builder has a lien on any special tool identified pursuant to subsection (1). The amount of the lien is the amount that a customer or end user owes the special tool builder for the fabrication, repair, or modification of the special tool. The information that the special tool builder is required to record on the special tool under subsection (1) and the financing statement required under subsection (2) shall constitute actual and constructive notice of the special tool builder's lien on the special tool.

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

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

- (a) The special tool builder is paid the amount owed by the customer or end user.
- (b) The customer receives a verified statement from the end user that the end user has paid the amount for which the lien is claimed.
- (c) The financing statement is terminated.

(6) The priority of a lien created under this act on a special tool shall be determined by the time the lien attaches. The first lien to attach shall have priority over liens that attach subsequent to the first lien.

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

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

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

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

Sec. 29. (1) Before a special tool builder may sell a special tool for which a lien is claimed and for which the required notice has been sent under section 25, the special tool builder shall notify the customer, the end user, and all other persons that have a perfected security interest in the special tool under part 5 of article 9 of the uniform commercial code, 1962 PA 174, MCL 440.9501 to 440.9527, by certified mail, return receipt requested, of all of the following:

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

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

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

(d) The time and place of the sale.

(e) An itemized statement of the amount due.

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

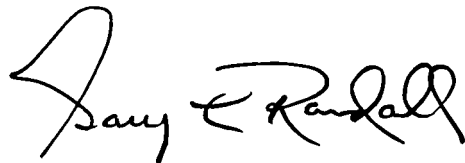
(2) If there is no return of the receipt of the mailing or if the postal service returns the notice as being nondeliverable, the special tool builder shall publish notice of the special tool builder's intention to sell the special tool in a newspaper of general circulation in the place where the special tool is 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 shall include a description of the special tool and the name of the customer and the end user.

(3) If a customer or end user against whom the lien is asserted disagrees that the special tool was accepted or that the acceptance was not subsequently rejected, the customer or end user shall 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. A special tool builder who receives this notice shall not sell the special tool until the dispute is resolved.

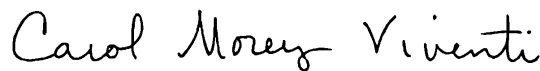
Sec. 31. (1) If the proceeds of the sale are greater than the amount of the lien, the proceeds shall first be paid to the special tool builder in the amount necessary to satisfy the lien. All proceeds in excess of the lien shall be paid to the customer.

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

This act is ordered to take immediate effect.



Clerk of the House of Representatives.



Secretary of the Senate.

Approved _____

Governor.