

By the Committee on Judiciary and Senator Latvala

308-606-98

1 A bill to be entitled
2 An act relating to molders; providing
3 definitions; providing obligations of molders
4 to customers; providing procedures and
5 conditions for acquisition of title to
6 unclaimed molds; creating s. 713.596, F.S.;
7 creating a molder's lien and specifying rights
8 of a molder; providing definitions; providing
9 procedures; providing for application and
10 repeal; providing an effective date.

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12 Be It Enacted by the Legislature of the State of Florida:

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14 Section 1. Acquisition of title to unclaimed molds.--

15 (1) DEFINITIONS.--As used in this section, the term:

16 (a) "Customer" means any person who causes a molder to
17 fabricate, cast, or otherwise make a mold, or who provides a
18 molder with a mold with which to manufacture, assemble, cast,
19 fabricate, or otherwise make a product for a customer.

20 (b) "Mold" means a die, mold, form, or pattern, but
21 does not include computer software used to control or direct
22 automatic machines in a manufacturing process, and does not
23 include dental impressions, molds, models, or study casts used
24 by a dentist within the scope of his or her practice.

25 (c) "Molder" means any person who fabricates, casts,
26 or otherwise makes or uses a mold for the purpose of
27 manufacturing, assembling, casting, fabricating, or otherwise
28 making a product for a customer. The term includes a tool or
29 die maker.

30 (d) "Records" means documents created or held by a
31 molder in its regular course of business.

1 (e) "Unclaimed mold" means a mold which is in the
2 custody of a molder, title to which remains in the customer
3 who ordered or provided the mold, and which has not been used
4 to make a product for at least 3 years.

5 (2) OBLIGATIONS OF MOLDERS TO CUSTOMERS.--

6 (a) For molds placed in the custody of a molder on or
7 after July 1, 1998, the molder shall:

8 1. Make and retain a written record containing, at a
9 minimum, the customer's name, address, and telephone number, a
10 description of the mold in sufficient detail for clear
11 identification, the beginning date of the use of the mold, the
12 last date on which a purchase order was received for the use
13 of the mold, and the date on which the manufacture of the
14 products for the purchase order was completed.

15 2. Inform the customer of the existence of the
16 provisions of this section and provide the customer with a
17 copy of the provisions of this section upon the customer's
18 request.

19 (b) Regardless of the date of placing the mold in the
20 custody of the molder, the molder shall:

21 1. Update its records if a customer informs the molder
22 of a change of address or if the molder receives a new
23 purchase order from the customer for additional use of the
24 mold.

25 2. Inform the customer of the existence of the
26 provisions of this section when renewing or updating the
27 records relating to use of a mold ordered or provided by that
28 customer and provide the customer with a copy of the
29 provisions of this section upon the customer's request.

30 (3) CUSTOMER'S NOTICE.--It is the responsibility of a
31 customer as the owner of a mold in the custody of a molder to

1 notify the molder promptly in writing of any change in the
2 customer's address. Failure to notify the molder of this
3 change may result in the customer's loss of rights to the
4 property.

5 (4) ACQUISITION OF TITLE TO UNCLAIMED MOLDS.--

6 (a) To acquire title to an unclaimed mold, a molder
7 must first give notice, to the customer who owns the mold and
8 to any holder of a security interest in the mold which was
9 perfected in this state, of the molder's intent to acquire the
10 title to the mold. The molder must make a good-faith and
11 reasonable search for the identity and last known address of
12 the customer from the molder's records and other records
13 reasonably available to the molder's staff. If the molder is
14 able to identify the customer and the customer's last known
15 address, the molder shall give notice to the customer pursuant
16 to paragraph (b). If the identity or last known address of
17 the customer remains unknown after a good-faith and reasonable
18 search, the molder shall give notice by publication pursuant
19 to paragraph (c). Notice to a holder of a perfected security
20 interest in the mold must be given pursuant to paragraph (d).

21 (b) If the molder is able to identify the customer and
22 the customer's last known address, the molder shall provide
23 notice of intent to acquire title to an unclaimed mold by
24 sending a notice by certified mail, return receipt requested,
25 to the customer at the customer's last known address. The
26 notice shall include the date of mailing the notice, the name
27 of the customer, a description of the mold in sufficient
28 detail for clear identification, the beginning date of the use
29 of the mold, the last date on which a purchase order was
30 received for the use of the mold, the date on which the
31 manufacture of the products for the purchase order was

1 completed, the location of the mold, the name and address of
2 the appropriate molder official to be contacted regarding the
3 mold, and a statement that within 90 days after the date of
4 receipt of the notice of intent to acquire title, the customer
5 is required to remove the mold from the molder's premises or
6 contact the designated official to make contractual
7 arrangements for storage of the mold.

8 (c) If the molder is unable to identify sufficient
9 information to send notice pursuant to paragraph (b), or if a
10 signed return receipt of a notice sent by certified mail
11 pursuant to paragraph (b) is not received by the molder within
12 30 days after the notice is mailed, the molder shall publish
13 the notice of intent to acquire title to the unclaimed mold at
14 least twice, 60 or more days apart, in a publication of
15 general circulation in the county in which the molder is
16 located and the county of the customer's last known address,
17 if known. The published notice shall contain all the
18 information required in paragraph (b) which is available to
19 the molder.

20 (d) The molder must make a search of Uniform
21 Commercial Code lien filings with the Florida Department of
22 State, Division of Corporations, and, if the molder is able to
23 identify a holder of a perfected security interest in the
24 mold, the molder shall provide notice of intent to acquire
25 title to the mold by sending a notice by certified mail,
26 return receipt requested, to the lienholder at the
27 lienholder's last address of record with the division. The
28 notice shall contain all the information required by paragraph
29 (b) which is available to the molder.

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1 (5) MOLDER GAINING TITLE TO PROPERTY;
2 CONDITIONS.--Beginning July 1, 1998, a molder acquires title
3 to an unclaimed mold under any of the following circumstances:
4 (a) For an unclaimed mold for which a molder provides
5 notice to a customer in accordance with paragraph (4)(b) and
6 for which a signed receipt is received, if the customer or
7 anyone having a legal interest in the mold does not contact
8 the molder and either remove the mold from the molder's
9 premises or make contractual arrangements with the molder for
10 storage of the mold within 90 days after the date notice was
11 received.
12 (b) For an unclaimed mold for which notice by
13 publication is made pursuant to paragraph (4)(c), if the
14 customer or anyone having a legal interest in the mold does
15 not contact the molder and either remove the mold from the
16 molder's premises or make contractual arrangements with the
17 molder for storage of the mold within 90 days after the date
18 of the second publication.
19 (6) CONTRACTUAL OBLIGATIONS.--Notwithstanding the
20 provisions of this section, a molder and a customer may bind
21 themselves to different provisions by written contract.
22 (7) EFFECT ON OTHER RIGHTS.--This section does not
23 affect the rights of a holder of a perfected security interest
24 in a mold or any right of the customer under federal patent or
25 copyright law or federal law relating to unfair competition.
26 (8) TITLE OF PROPERTY ACQUIRED FROM A MOLDER.--A
27 molder who acquires title to a mold under this section passes
28 good title to another when transferring the mold with the
29 intent to pass title.
30 Section 2. Section 713.596, Florida Statutes, is
31 created to read:

1 713.596 Molder's liens.--

2 (1) DEFINITIONS.--As used in this section, the term:

3 (a) "Customer" means any person who causes a molder to
4 fabricate, cast, or otherwise make a mold, or who provides a
5 molder with a mold with which to manufacture, assemble, cast,
6 fabricate, or otherwise make a product for a customer.

7 (b) "Mold" means a die, mold, form, or pattern, but
8 does not include computer software used to control or direct
9 automatic machines in a manufacturing process, and does not
10 include dental impressions, molds, models, or study casts used
11 by a dentist within the scope of his or her practice.

12 (c) "Molder" means any person who fabricates, casts,
13 or otherwise makes or uses a mold for the purpose of
14 manufacturing, assembling, casting, fabricating, or otherwise
15 making a product for a customer. The term includes a tool or
16 die maker.

17 (2) LIENS.--

18 (a) A molder that has not received payment from a
19 customer in accordance with the terms of the contract between
20 the two has a lien on a mold in the molder's possession which
21 belongs to that customer. The lien is for the balance due the
22 molder from the customer for any work that the molder has
23 performed for the customer in manufacturing or fabricating
24 products for the customer using the mold and for the value of
25 all material related to such work. The molder may retain
26 possession of the mold until the debts are paid.

27 (b) Before enforcing the lien, the molder must notify
28 the customer in writing of the claim of lien. The notice must
29 be either delivered personally or sent by certified mail,
30 return receipt requested, to the last known address of the
31 customer. The notice must state that the molder claims a lien

1 for the balance due for work that the molder has performed in
2 manufacturing or fabricating products for the customer using
3 the mold and for the value of related materials as is
4 specified in the notice. Additionally, the notice must include
5 a statement of the amount of the balance owed, a demand for
6 payment, and a statement of the location of the mold. Finally,
7 the notice must include the following warning in conspicuous
8 type and in substantially the following form:

9 WARNING: YOUR FAILURE TO PAY THE UNPAID BALANCE AS STATED
10 HEREIN WILL RESULT IN THE IMPOSITION OF A LIEN ON THE MOLD
11 DESCRIBED HEREIN AND IN THE SALE OF THAT MOLD AS PROVIDED BY
12 LAW.

13 (c) If the customer does not pay the amount due as
14 stated in the notice within 60 days after the date of receipt
15 of the notice, the molder may sell the mold at a public
16 auction. However, the mold may not be sold if there is a
17 good-faith dispute or litigation between the molder and the
18 customer concerning either the quality of the products made or
19 fabricated by use of the mold or the amount due.

20 (3) SALE.--

21 (a) Before a molder may sell a mold, the molder must
22 notify the customer and any holder of a security interest
23 perfected in this state of the intended sale. The notice must
24 be by certified mail, return receipt requested, and must
25 include:

26 1. Notice of the molder's intent to sell the mold 30
27 days after the customer's receipt of the notice.

28 2. A description of the mold to be sold.

29 3. The time and place of the sale.

30 4. An itemized statement of the amount due.

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1 (b) If there is no return of the receipt of the
2 mailing or if the postal service returns the notice as being
3 nondeliverable, the molder must publish notice, at least 30
4 days before the date of sale in a newspaper of general
5 circulation in the county of the customer's last known place
6 of business, of the molder's intent to sell the mold. The
7 notice must include a description of the mold to be sold and
8 the time and place of the sale.

9 (c)1. The proceeds of the sale must be paid first to
10 any holder of a security interest perfected in this state. Any
11 excess must be paid to the molder holding the lien created by
12 this section. Any remaining amount is to be paid to the
13 customer, if the customer's address is known, or to the State
14 Treasurer for deposit in the General Revenue Fund if the
15 customer's address is unknown to the molder at the time of the
16 sale.

17 2. A sale may not be made under this section if it
18 would be in violation of any right of a customer under federal
19 patent or copyright law.

20 Section 3. Section 1 of this act applies only to
21 contracts entered into before January 1, 1999, and is repealed
22 effective January 1, 2001.

23 Section 4. This act shall take effect July 1, 1998.
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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 114

4 The committee substitute makes the following changes to the
5 provisions on acquisition of title to unclaimed molds:

- 6 * Exemptions are provided from the term "mold."
- 7 * Notice is required to any holder of a security interest
8 in the mold which was perfected in this state. The molder
9 must make a search of UCC lien filings to identify such
10 lienholders.
- 11 * Express provisions are made that the section does not
12 affect the rights of a holder of a perfected security
13 interest in a mold.
- 14 * Provisions apply only to contracts entered into before
15 January 1, 1999, and are repealed effective January 1,
16 2001.

13 The committee substitute makes the following changes to the
14 provisions on liens for unpaid balances:

- 15 * Exemptions are provided from the term "mold."
 - 16 * The notice sent to a customer must contain a warning to
17 the customer that failure to pay the unpaid balances will
18 result in a lien on and sale of the mold.
 - 19 * The mold cannot be sold if there is a good faith dispute
20 or litigation between the molder and the customer
21 concerning the quality of products or the amount due.
 - 22 * Notice is required to a holder of a security interest in
23 the mold perfected in this state prior to sale of the
24 mold to satisfy the lien.
 - 25 * Proceeds of sale are to be paid first to the holder of a
26 security interest perfected in this state.
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