

Bill No. HB 1403, 1st Eng.

Amendment No.

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
1		.	
2		.	
3		.	
4		.	
5	<hr/>		
6			
7			
8			
9			
10	<hr/>		
11	Senator Latvala moved the following amendment:		
12			
13	Senate Amendment (with title amendment)		
14	Delete everything after the enacting clause		
15			
16	and insert:		
17	Section 1. Subsections (12), (13), (26), and (27) of		
18	section 713.01, Florida Statutes, are amended to read:		
19	713.01 Definitions.--As used in this part, the term:		
20	(12) "Improve" means build, erect, place, make, alter,		
21	remove, repair, or demolish any improvement over, upon,		
22	connected with, or beneath the surface of real property, or		
23	excavate any land, or furnish materials for any of these		
24	purposes, or perform any labor or services upon the		
25	improvements, including the furnishing of carpet or rugs or		
26	appliances that are permanently affixed to the real property		
27	and final construction cleanup to prepare a structure for		
28	occupancy; or perform any labor or services or furnish any		
29	materials in grading, seeding, sodding, or planting for		
30	landscaping purposes, including the furnishing of trees,		
31	shrubs, bushes, or plants that are planted on the real		

Bill No. HB 1403, 1st Eng.

Amendment No. ____

1 property, or in equipping any improvement with fixtures or
2 permanent apparatus or provide any solid-waste collection or
3 disposal on the site of the improvement.

4 (13) "Improvement" means any building, structure,
5 construction, demolition, excavation, solid-waste removal,
6 landscaping, or any part thereof existing, built, erected,
7 placed, made, or done on land or other real property for its
8 permanent benefit.

9 (26) "Subcontractor" means a person other than a
10 materialman or laborer who enters into a contract with a
11 contractor for the performance of any part of such
12 contractor's contract, including the removal of solid waste
13 from the real property.

14 (27) "Sub-subcontractor" means a person other than a
15 materialman or laborer who enters into a contract with a
16 subcontractor for the performance of any part of such
17 subcontractor's contract, including the removal of solid waste
18 from the real property.

19 Section 2. Acquisition of title to unclaimed molds.--

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

21 (a) "Customer" means any person who causes a molder to
22 fabricate, cast, or otherwise make a mold, or who provides a
23 molder with a mold with which to manufacture, assemble, cast,
24 fabricate, or otherwise make a product for a customer.

25 (b) "Mold" means a die, mold, form, or pattern, but
26 does not include computer software used to control or direct
27 automatic machines in a manufacturing process, and does not
28 include impressions, molds, models, or study casts used by a
29 dentist, orthotist, or prosthetist within the scope of his or
30 her practice.

31 (c) "Molder" means any person who fabricates, casts,

Bill No. HB 1403, 1st Eng.

Amendment No.

1 or otherwise makes or uses a mold for the purpose of
2 manufacturing, assembling, casting, fabricating, or otherwise
3 making a product for a customer. The term includes a tool or
4 die maker.

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

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

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

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

14 1. Make and retain a written record containing, at a
15 minimum, the customer's name, address, and telephone number, a
16 description of the mold in sufficient detail for clear
17 identification, the beginning date of the use of the mold, the
18 last date on which a purchase order was received for the use
19 of the mold, and the date on which the manufacture of the
20 products for the purchase order was completed.

21 2. Inform the customer of the existence of the
22 provisions of this section and provide the customer with a
23 copy of the provisions of this section upon the customer's
24 request.

25 (b) Regardless of the date of placing the mold in the
26 custody of the molder, the molder shall:

27 1. Update its records if a customer informs the molder
28 of a change of address or if the molder receives a new
29 purchase order from the customer for additional use of the
30 mold.

31 2. Inform the customer of the existence of the

Bill No. HB 1403, 1st Eng.

Amendment No. ____

1 provisions of this section when renewing or updating the
2 records relating to use of a mold ordered or provided by that
3 customer and provide the customer with a copy of the
4 provisions of this section upon the customer's request.

5 (3) CUSTOMER'S NOTICE.--It is the responsibility of a
6 customer as the owner of a mold in the custody of a molder to
7 notify the molder promptly in writing of any change in the
8 customer's address. Failure to notify the molder of this
9 change may result in the customer's loss of rights to the
10 property.

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

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

27 (b) If the molder is able to identify the customer and
28 the customer's last known address, the molder shall provide
29 notice of intent to acquire title to an unclaimed mold by
30 sending a notice by certified mail, return receipt requested,
31 to the customer at the customer's last known address. The

Bill No. HB 1403, 1st Eng.

Amendment No.

1 notice shall include the date of mailing the notice, the name
2 of the customer, a description of the mold in sufficient
3 detail for clear identification, the beginning date of the use
4 of the mold, the last date on which a purchase order was
5 received for the use of the mold, the date on which the
6 manufacture of the products for the purchase order was
7 completed, the location of the mold, the name and address of
8 the appropriate molder official to be contacted regarding the
9 mold, and a statement that within 90 days after the date of
10 receipt of the notice of intent to acquire title, the customer
11 is required to remove the mold from the molder's premises or
12 contact the designated official to make contractual
13 arrangements for storage of the mold.

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

26 (d) The molder must make a search of Uniform
27 Commercial Code lien filings with the Florida Department of
28 State, Division of Corporations, and, if the molder is able to
29 identify a holder of a perfected security interest in the
30 mold, the molder shall provide notice of intent to acquire
31 title to the mold by sending a notice by certified mail,

Bill No. HB 1403, 1st Eng.

Amendment No. ____

1 return receipt requested, to the lienholder at the
2 lienholder's last address of record with the division. The
3 notice shall contain all the information required by paragraph
4 (b) which is available to the molder.

5 (5) MOLDER GAINING TITLE TO PROPERTY;

6 CONDITIONS.--Beginning July 1, 1998, a molder acquires title
7 to an unclaimed mold under any of the following circumstances:

8 (a) For an unclaimed mold for which a molder provides
9 notice to a customer in accordance with paragraph (4)(b) and
10 for which a signed receipt is received, if the customer or
11 anyone having a legal interest in the mold does not contact
12 the molder and either remove the mold from the molder's
13 premises or make contractual arrangements with the molder for
14 storage of the mold within 90 days after the date notice was
15 received.

16 (b) For an unclaimed mold for which notice by
17 publication is made pursuant to paragraph (4)(c), if the
18 customer or anyone having a legal interest in the mold does
19 not contact the molder and either remove the mold from the
20 molder's premises or make contractual arrangements with the
21 molder for storage of the mold within 90 days after the date
22 of the second publication.

23 (6) CONTRACTUAL OBLIGATIONS.--Notwithstanding the
24 provisions of this section, a molder and a customer may bind
25 themselves to different provisions by written contract.

26 (7) EFFECT ON OTHER RIGHTS.--This section does not
27 affect the rights of a holder of a perfected security interest
28 in a mold or any right of the customer under federal patent or
29 copyright law or federal law relating to unfair competition.

30 (8) TITLE OF PROPERTY ACQUIRED FROM A MOLDER.--A
31 molder who acquires title to a mold under this section passes

Bill No. HB 1403, 1st Eng.

Amendment No. ____

1 good title to another when transferring the mold with the
2 intent to pass title.

3 Section 3. Section 713.596, Florida Statutes, is
4 created to read:

5 713.596 Molder's liens.--

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

7 (a) "Customer" means any person who causes a molder to
8 fabricate, cast, or otherwise make a mold, or who provides a
9 molder with a mold with which to manufacture, assemble, cast,
10 fabricate, or otherwise make a product for a customer.

11 (b) "Mold" means a die, mold, form, or pattern, but
12 does not include computer software used to control or direct
13 automatic machines in a manufacturing process, and does not
14 include impressions, molds, models, or study casts used by a
15 dentist, orthotist, or prosthetist within the scope of his or
16 her practice.

17 (c) "Molder" means any person who fabricates, casts,
18 or otherwise makes or uses a mold for the purpose of
19 manufacturing, assembling, casting, fabricating, or otherwise
20 making a product for a customer. The term includes a tool or
21 die maker.

22 (2) LIENS.--

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

Bill No. HB 1403, 1st Eng.

Amendment No.

1 (b) Before enforcing the lien, the molder must notify
2 the customer in writing of the claim of lien. The notice must
3 be either delivered personally or sent by certified mail,
4 return receipt requested, to the last known address of the
5 customer. The notice must state that the molder claims a lien
6 for the balance due for work that the molder has performed in
7 manufacturing or fabricating products for the customer using
8 the mold and for the value of related materials as is
9 specified in the notice. Additionally, the notice must include
10 a statement of the amount of the balance owed, a demand for
11 payment, and a statement of the location of the mold. Finally,
12 the notice must include the following warning in conspicuous
13 type and in substantially the following form:

14 WARNING: YOUR FAILURE TO PAY THE UNPAID BALANCE AS STATED
15 HEREIN WILL RESULT IN THE IMPOSITION OF A LIEN ON THE MOLD
16 DESCRIBED HEREIN AND IN THE SALE OF THAT MOLD AS PROVIDED BY
17 LAW.

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

25 (3) SALE.--

26 (a) Before a molder may sell a mold, the molder must
27 notify the customer and any holder of a security interest
28 perfected in this state of the intended sale. The notice must
29 be by certified mail, return receipt requested, and must
30 include:

- 31 1. Notice of the molder's intent to sell the mold 30

Bill No. HB 1403, 1st Eng.

Amendment No.

1 days after the customer's receipt of the notice.
2 2. A description of the mold to be sold.
3 3. The time and place of the sale.
4 4. An itemized statement of the amount due.
5 (b) If there is no return of the receipt of the
6 mailing or if the postal service returns the notice as being
7 nondeliverable, the molder must publish notice, at least 30
8 days before the date of sale in a newspaper of general
9 circulation in the county of the customer's last known place
10 of business, of the molder's intent to sell the mold. The
11 notice must include a description of the mold to be sold and
12 the time and place of the sale.
13 (c)1. The proceeds of the sale must be paid first to
14 any holder of a security interest perfected in this state. Any
15 excess must be paid to the molder holding the lien created by
16 this section. Any remaining amount is to be paid to the
17 customer, if the customer's address is known, or to the State
18 Treasurer for deposit in the General Revenue Fund if the
19 customer's address is unknown to the molder at the time of the
20 sale.
21 2. A sale may not be made under this section if it
22 would be in violation of any right of a customer under federal
23 patent or copyright law.
24 Section 4. Section 2 of this act applies only to
25 contracts entered into before January 1, 1999, and is repealed
26 effective January 1, 2001.
27 Section 5. This act shall take effect July 1, 1998.
28
29
30 ===== T I T L E A M E N D M E N T =====
31 And the title is amended as follows:

Bill No. HB 1403, 1st Eng.

Amendment No. ____

1 Delete everything before the enacting clause
2
3 and insert:
4 A bill to be entitled
5 An act relating to liens; amending s. 713.01,
6 F.S.; redefining the terms "improve,"
7 "improvement," "subcontractor," and
8 "sub-subcontractor" to include reference to
9 solid-waste removal; providing obligations of
10 molders to customers; providing procedures and
11 conditions for acquisition of title to
12 unclaimed molds; creating s. 713.596, F.S.;
13 creating a molder's lien and specifying rights
14 of a molder; providing definitions; providing
15 procedures; providing for application and
16 repeal; providing an effective date.
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31