



**Sub. S.B. 191\***

125th General Assembly

(As Reported by S. Insurance, Commerce, and Labor)

**Sen. Randy Gardner**

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**BILL SUMMARY**

- Establishes a moldbuilder's lien on molds and proceeds from the disposition of molds produced by a moldbuilder.
- Establishes filing and notification requirements to perfect a moldbuilder's lien.
- Establishes the priority of moldbuilder's liens and the means for enforcing those liens.
- Specifies contractual provisions that are unenforceable as against public policy.
- Allows moldbuilders that suffer damages to obtain appropriate legal and equitable relief.

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**CONTENT AND OPERATION**

**Molder's liens**

Under existing law, a molder<sup>1</sup> has a lien on a die, mold, pattern, or form that is in the molder's possession and that belongs to a customer, for the following:

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\* This analysis was prepared before the report of the Senate Insurance, Commerce, and Labor Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

<sup>1</sup> A "molder" is defined in existing law as "any person, including, but not limited to, a tool or die maker, who does either of the following:

- (1) The amount due from the customer for plastic, metal, paper, china, ceramic, glass, or rubber fabrication work performed with the die, mold, pattern, or form, or for making or improving the die, mold, pattern, or form;
- (2) The cost associated with the notice required under current law;
- (3) Costs and interest awarded in a judgment. (Sec. 1333.31(A).)

The molder's lien law specifies possession rights, notification requirements, methods of enforcement, priority of liens, and requirements regarding the sale of a die, mold, pattern, or form that is the subject of a lien. (Sec. 1333.31.)

### **New moldbuilder's lien**

#### **Definitions**

The bill establishes a new, separate moldbuilder's lien, and for that purpose defines the subsequent terms as follows:

- (1) "Customer" means a person that causes a moldbuilder to fabricate, cut, cast, or design molds;
- (2) "Mold" means molds, dies, forms, tools, and parts, for the plastic industry or for the metal forming industry;
- (3) "Moldbuilder" means a person, including but not limited to, a model maker, patternmaker, die maker, jig and fixture builder, die sinker, mold designer, mold programmer, and mold engineer, that fabricates, cuts, casts, or designs molds for the plastic industry or for the metal forming industry, and does not include a person similarly described as a "molder" for purposes of the molder's lien law (sec. 1333.31), unless the person also engages in the activities described in the bill's definition of moldbuilder.
- (4) "Molder" has the same definition as in the molder's lien law, except that it does not include a moldbuilder.
- (5) "Person" means an individual, firm, partnership, association, corporation, limited liability company, or other legal entity. (Sec. 1333.32.)

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*(1) Fabricates, casts, or otherwise makes, or improves, a die, mold, pattern, or form to produce plastic, metal, paper, china, ceramic, glass, or rubber products;*

*(2) Uses a die, mold, pattern, or form to manufacture, assemble, or otherwise make a plastic, metal, paper, china, ceramic, glass, or rubber product." (Sec. 1333.29(A).)*

### **Moldbuilder's lien on molds**

Under the bill, a moldbuilder has a lien on all molds produced by the moldbuilder and on all proceeds from the assignment, sale, transfer, exchange, or other disposition of the molds produced by the moldbuilder until the moldbuilder is paid in full all amounts due the moldbuilder for the production of the mold or these proceeds. The lien attaches when the mold is delivered from the moldbuilder to the customer.

The bill specifies that the amount of the lien is the amount that a customer or molder owes the moldbuilder for the fabrication, repair, or modification of the mold. Under the bill, the moldbuilder retains the lien even if the moldbuilder is not in possession of the mold for which the lien is claimed. (Sec. 1333.33(A).)

### **Perfecting and priority of moldbuilder's liens**

To perfect a lien, the bill requires a moldbuilder to file a financing statement in accordance with the requirements of the Secured Transactions Law (R.C. Chapter 1309.). The bill specifies that this filing constitutes constructive notice of the lien. (Sec. 1333.33(B).)

A perfected lien remains valid under the bill until all of the following occur:

- (1) The moldbuilder receives the full amount due for the mold;
- (2) The customer receives a verified statement from the molder that the molder has paid the amount for which the lien is claimed;
- (3) The financing statement is terminated. (Sec. 1333.33(C).)

Under the bill, the priority of a perfected lien on the same mold is determined based on the time the lien attaches. The first lien that attaches has priority over liens that attach subsequent to the first lien. (Sec. 1333.33(D).)

### **Contract provisions that are void and unenforceable**

The bill specifies that any provision of a contract that waives a moldbuilder's right or an obligation of a person established under the bill is void and unenforceable as against public policy. However, per the bill, this specification in the law does not affect the validity of other provisions of a contract or of a related document, policy, or agreement that can be given effect without the voided provision. Additionally, the bill specifies that any provision of a contract requiring the application of the law of another state rather than the lien

law established by the bill is void and unenforceable as against public policy. (Sec. 1333.33(E).)

**Enforcing a moldbuilder's lien**

To enforce a moldbuilder's lien, the bill requires the moldbuilder to give written notice to the customer and molder stating that a lien is claimed; the amount that the moldbuilder claims is owed for fabrication, repair, or modification of the mold; and a demand for payment. The written notice must be given by hand delivery or certified mail, return receipt requested, to the last known address of the customer and of the molder. (Sec. 1333.34(A).)

If the moldbuilder has not been paid the amount claimed in the notice within 90 days after that notice is received by the customer and by the molder, the bill gives the moldbuilder the right to possession of the mold and allows the moldbuilder to do the following:

(1) Enforce the right to possession of the mold by judgment, foreclosure, or any available judicial procedure;

(2) Commence a civil action in a court of common pleas to enforce the lien, including by obtaining a judgment for the amounts owed and a judgment permitting the mold to be sold at an execution sale;

(3) Take possession of the mold, if possession without judicial process can be done without breach of the peace;

(4) Sell the mold in a public auction. (Sec. 1333.34(B).)

A sale under the terms allowed by the bill cannot, however, be made and possession cannot be obtained, if it violates a right of the customer or molder under federal patent, bankruptcy, or copyright laws. (Sec. 1333.34(C).)

The bill allows a moldbuilder that suffers damages because of a violation of the bill to obtain appropriate legal and equitable relief, including damages, in a civil action. Also, the bill specifies that in any action by a moldbuilder to enforce a perfected lien under the bill's provisions, the court must award the moldbuilder that is the prevailing party reasonable attorney fees, court costs, and expenses related to enforcement of the lien. (Sec. 1333.34(D) and (E).)

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-03-04	p. 1478
Reported, S. Insurance, Commerce, & Labor	---	---

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