

# HOUSE BILL No. 6692

November 19, 2008, Introduced by Reps. Meltzer, Sheen, Calley, Agema, Brandenburg, Pastor, Moss, Hoogendyk, Horn, Acciavatti and Garfield and referred to the Committee on Commerce.

A bill to amend 2002 PA 481, entitled "Special tools lien act," by amending sections 23, 27, and 31 (MCL 570.563, 570.567, and 570.571) and by adding section 24.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

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

5       (1) ~~(2)~~A special tool builder shall file a financing  
 6 statement in accordance with the requirements of section 9502 of  
 7 the uniform and commercial code, 1962 PA 174, MCL 440.9502.

8       (2) ~~(3)~~A special tool builder has a lien on any special tool  
 9 ~~identified pursuant to subsection (1)~~ **THAT THE SPECIAL TOOL BUILDER**

1 **FABRICATES, REPAIRS, OR MODIFIES.** The amount of the lien is the  
 2 amount that a customer or end user owes the special tool builder  
 3 for the fabrication, repair, or modification of the special tool.  
 4 ~~The information that the special tool builder is required to record~~  
 5 ~~on the special tool under subsection (1) and the financing~~  
 6 ~~statement required under subsection (2) shall constitute (1)~~  
 7 **CONSTITUTES** actual and constructive notice of the special tool  
 8 builder's lien on the special tool.

9 (3) ~~(4) The~~ **A** special tool builder's lien **CREATED UNDER THIS**  
 10 **ACT** attaches when ~~actual or constructive notice is received~~ **THE**  
 11 **FINANCING STATEMENT IS FILED UNDER SUBSECTION (1).** The special tool  
 12 builder retains the lien that attaches under this section even if  
 13 the special tool builder is not in physical possession of the  
 14 special tool for which the lien is claimed.

15 (4) ~~(5) The~~ **A** lien **CREATED UNDER THIS ACT** remains valid until  
 16 the first of the following events takes place:

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

19 (b) The customer receives a verified statement from the end  
 20 user that the end user has paid the amount for which the lien is  
 21 claimed.

22 (c) The financing statement is terminated.

23 (5) ~~(6) The~~ priority of a lien created under this act on a  
 24 special tool shall be determined by the time the lien attaches. The  
 25 first lien to attach ~~shall have~~ **HAS** priority over liens that attach  
 26 ~~subsequent to~~ **AFTER** the first lien.

27 **SEC. 24. (1) A PROVISION OF A CONTRACT THAT WAIVES A SPECIAL**

1 TOOL BUILDER'S RIGHT OR AN OBLIGATION OF A PERSON ESTABLISHED BY  
2 SECTIONS 23 TO 31 IS VOID AND UNENFORCEABLE AS AGAINST PUBLIC  
3 POLICY.

4 (2) A PROVISION OF A CONTRACT THAT REQUIRES THE APPLICATION OF  
5 THE LAW OF ANOTHER STATE RATHER THAN SECTIONS 23 TO 31 IS VOID AND  
6 UNENFORCEABLE AS AGAINST PUBLIC POLICY.

7 Sec. 27. Subject to section 29, if the special tool builder  
8 has not been paid the amount claimed in the notice required under  
9 section 25 within ~~90~~45 days after the notice ~~required under~~  
10 ~~section 25~~ has been received by the customer and the end user, the  
11 special tool builder has a right to **IMMEDIATE** possession of the  
12 special tool and may enforce the right to **IMMEDIATE** possession of  
13 the special tool by judgment, foreclosure, or any available  
14 judicial procedure, **INCLUDING A MOTION ALLOWED UNDER THE COURT**  
15 **RULES**. The special tool builder may do 1 or ~~more~~**BOTH** of the  
16 following:

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

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

21 Sec. 31. (1) If the proceeds of ~~the~~**A** sale **UNDER SECTION 27**  
22 are greater than the amount of the lien, the proceeds shall first  
23 be paid to the special tool builder in the amount necessary to  
24 satisfy the lien **AND ANY ATTORNEY FEES, COURT COSTS, AND EXPENSES**  
25 **AWARDED UNDER SUBSECTION (3)**. All proceeds in excess of the ~~lien~~  
26 **AMOUNT PAID TO THE SPECIAL TOOL BUILDER** shall be paid to the  
27 customer.

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

5           (3) IF A SPECIAL TOOL BUILDER PREVAILS IN AN ACTION TO ENFORCE  
6 A PERFECTED LIEN CREATED UNDER SECTION 23, THE COURT SHALL AWARD  
7 THE SPECIAL TOOL BUILDER REASONABLE ATTORNEY FEES, COURT COSTS, AND  
8 EXPENSES RELATED TO THE ENFORCEMENT OF THE LIEN AND SALE.