

HOUSE BILL No. 6693

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

A bill to amend 1981 PA 155, entitled

"An act to provide for ownership rights in dies, molds, and forms for use in the fabrication of plastic parts under certain conditions and to establish a lien on certain dies, molds, and forms,"

by amending sections 9, 10a, and 10c (MCL 445.619, 445.620a, and 445.620c), as added by 2002 PA 17, and by adding section 9a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 9. ~~(1) A moldbuilder shall permanently record on every~~
2 ~~die, mold, or form that the moldbuilder fabricates, repairs, or~~
3 ~~modifies the moldbuilder's name, street address, city, and state.~~

4 (1) ~~(2)~~ A moldbuilder shall file a financing statement in
5 accordance with the requirements of section 9502 of the uniform
6 commercial code, 1962 PA 174, MCL 440.9502.

7 (2) ~~(3)~~ A moldbuilder has a lien on any die, mold, or form
8 ~~identified pursuant to subsection (1)~~ **THAT THE MOLDBUILDER**

FABRICATES, REPAIRS, OR MODIFIES. The amount of the lien is the amount that a customer or molder owes the moldbuilder for the fabrication, repair, or modification of the die, mold, or form. The ~~information that the moldbuilder is required to record on the die, mold, or form under subsection (1) and the financing statement required under subsection (2) shall constitute (1)~~ **CONSTITUTES** actual and constructive notice of the moldbuilder's lien on the die, mold, or form.

(3) ~~(4) The A~~ moldbuilder's lien **CREATED UNDER THIS ACT** attaches when ~~actual or constructive notice is received THE~~ **FINANCING STATEMENT IS FILED UNDER SUBSECTION (1).** The moldbuilder retains the lien that attaches under this section even if the moldbuilder is not in physical possession of the die, mold, or form for which the lien is claimed.

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

(a) The moldbuilder is paid the amount owed by the customer or molder.

(b) The customer receives a verified statement from the molder that the molder has paid the amount for which the lien is claimed.

(c) The financing statement is terminated.

(5) ~~(6) The~~ priority of a lien created under this act on the same die, mold, or form shall be determined by the time the lien attaches. The first lien to attach ~~shall have~~ **HAS** priority over liens that attach ~~subsequent to~~ **AFTER** the first lien.

SEC. 9A. (1) A PROVISION OF A CONTRACT THAT WAIVES A MOLDBUILDER'S RIGHT OR AN OBLIGATION OF A PERSON ESTABLISHED BY

1 SECTIONS 9 TO 10C IS VOID AND UNENFORCEABLE AS AGAINST PUBLIC
2 POLICY.

3 (2) A PROVISION OF A CONTRACT THAT REQUIRES THE APPLICATION OF
4 THE LAW OF ANOTHER STATE RATHER THAN SECTIONS 9 TO 10C IS VOID AND
5 UNENFORCEABLE AS AGAINST PUBLIC POLICY.

6 Sec. 10a. Subject to section 10b, if the moldbuilder has not
7 been paid the amount claimed in the notice required under section
8 10 within ~~90~~ 45 days after the notice ~~required under section 10~~ has
9 been received by the customer and the molder, the moldbuilder has a
10 right to **IMMEDIATE** possession of the die, mold, or form and may
11 enforce the right to **IMMEDIATE** possession of the die, mold, or form
12 by judgment, foreclosure, or any available judicial procedure,
13 **INCLUDING A MOTION ALLOWED UNDER THE COURT RULES**. The moldbuilder
14 may do 1 or ~~more~~ **BOTH** of the following:

15 (a) Take **IMMEDIATE** possession of the mold, die, or form. The
16 moldbuilder may take **IMMEDIATE** possession without judicial process
17 if this can be done without breach of the peace.

18 (b) Sell the die, mold, or form in a public auction.

19 Sec. 10c. (1) If the proceeds of ~~the~~ **A** sale **UNDER SECTION 10A**
20 are greater than the amount of the lien, the proceeds shall first
21 be paid to the moldbuilder in the amount necessary to satisfy the
22 lien **AND ANY ATTORNEY FEES, COURT COSTS, AND EXPENSES AWARDED UNDER**
23 **SUBSECTION (3)**. All proceeds in excess of the ~~lien~~ **AMOUNT PAID TO**
24 **THE MOLDBUILDER** shall be paid to the customer.

25 (2) A sale shall not be made or possession shall not be
26 obtained under section 10a if it would be in violation of any right
27 of a customer or molder under federal patent, bankruptcy, or

1 copyright law.

2 (3) IF A MOLDBUILDER PREVAILS IN AN ACTION TO ENFORCE A
3 PERFECTED LIEN CREATED UNDER SECTION 9, THE COURT SHALL AWARD THE
4 MOLDBUILDER REASONABLE ATTORNEY FEES, COURT COSTS, AND EXPENSES
5 RELATED TO THE ENFORCEMENT OF THE LIEN AND SALE.