

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: December 5, 1997 Revised: _____

Subject: Molder's Liens

| | <u>Analyst</u> | <u>Staff Director</u> | <u>Reference</u> | <u>Action</u> |
|----|----------------|-----------------------|------------------|---------------------|
| 1. | <u>Wiehle</u> | <u>Lang</u> | <u>JU</u> | <u>Favorable/CS</u> |
| 2. | _____ | _____ | _____ | _____ |
| 3. | _____ | _____ | _____ | _____ |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |

I. Summary:

The bill creates a process by which a molder can acquire title to an unclaimed mold, that is, a mold which has not been used to make a product for at least 3 years. These provisions apply only to contracts entered into before January 1, 1999, and repeal on January 1, 2001. The bill also creates a lien for unpaid amounts due for manufacturing or fabrication work and for materials used in such work, with the lien to be enforced by public sale of the mold.

This bill creates section 713.596 of the Florida Statutes and an unnumbered section to be assigned by Statutory Revision.

II. Present Situation:

Currently molders have no similar title transfer or lien rights.

A. Transfer of Title

Section 265.565, F.S., was created in the 1997 Regular Session. ch. 97-267, Laws of Fla. The section provides for acquisition of title to "unclaimed property" which is on loan to museums. "Unclaimed property" means property which is on loan to the museum and in regard to which the lender, or anyone acting legitimately on the lender's behalf, has not contacted the museum for at least 25 years from the date of the beginning of the loan, if the loan was for an indefinite or undetermined period, or for at least 5 years after the date upon which the loan for a definite period expired.

The statute establishes record keeping and disclosure duties. For property loaned to a museum after the effective date of the section, October 1, 1997, the museum must:

1. Make and retain a written record containing, at a minimum, the lender's name, address, and telephone number, a description of the property loaned in sufficient detail for clear identification, including a description of the general condition of the property at the time of the loan, the beginning date of the loan, and the expiration date of the loan.
2. Provide the lender with a signed receipt or loan agreement containing, at a minimum, the written record required above.
3. Inform the lender of the existence of the provisions of the statute and provide the lender with a copy of the provisions of the statute upon the lender's request.

Regardless of the date of a loan of property, the museum must:

1. Update its records if a lender informs the museum of a change of address or change in ownership of property loaned, or if the lender and museum negotiate a change in the duration of the loan.
2. Inform the lender of the existence of the provisions of the statute when renewing or updating the records of an existing loan and provide the lender with a copy of the provisions of the statute upon the lender's request.

A lender must notify the museum promptly in writing of any change in the lender's address or change in ownership of the property. Failure to notify the museum of these changes may result in the owner's loss of rights to the property. A successor in interest to a lender must document passage of rights of control of the property in the custody of a museum.

The first step in a museum's termination of a loan of unclaimed property in its possession is making a good faith and reasonable search for the identity and last known address of the lender from the museum records and other records reasonably available to museum staff. If the museum is able to identify the lender and the lender's last known address, the museum must give notice to the lender that the loan is terminated by sending a letter by certified mail to the lender at the lender's last known address. The notice must include the date of notice of termination, the name of the lender, a description of the property sufficient in detail for ready identification, the beginning date of the loan, if known, the termination date of the loan, if applicable, the name and address of the appropriate museum official to be contacted regarding the loan, and a statement that within 90 days of the date of the notice of termination, the lender is required to remove the property from the museum or contact the designated official in the museum to preserve the lender's interests in the property.

If the museum is unable to identify sufficient information to give notice by certified mail, or if a signed return receipt of a notice sent by certified mail is not received by the museum within 30 days after the notice is mailed, the museum must publish the notice of termination of loan. The published notice must contain all the information available to the museum which is required in the certified mail notice and must be published at least twice, 60 or more days apart, in a publication

of general circulation in the county in which the museum is located and the county of the lender's last known address, if known.

A museum acquires title to unclaimed property under any of the following circumstances:

1. For property for which a museum provides notice to a lender by certified mail and a signed receipt is received, if the lender of the property does not contact the museum within 90 days after the date notice was received.
2. For property for which notice is given by publication, if the lender or anyone claiming a legal interest in the property does not contact the museum within 90 days after the date of the second publication.

Notwithstanding the provisions of the statute, a lender and museum can bind themselves to different loan provisions by written contract.

A museum which acquires title to unclaimed property under this statute passes good title to another when transferring such property with the intent to pass title.

B. Other Statutory Means of Disposing of Property of Another

1. Abandoned Property

Chapter 717, F.S., provides a process whereby different types of entities which come into possession of property of others that is unclaimed are to attempt to contact such persons, to file reports of abandoned property with the Department of Banking and Finance, and to turn over to the Department property for which the owner cannot be found. The Department makes further attempts to locate the owner and disposes of the property at a public sale. Any proceeds not claimed by the rightful owner are deposited into the State School Fund.

2. Termination of Storage at Warehouseman's Option

Section 677.206, F.S., provides a method by which a warehouseman holding property of another may terminate the storage of that property. To do so, the warehouseman must notify the person on whose account the goods are held and any other person known to claim an interest in the goods of the requirement to pay any charges and remove the goods from the warehouse at the termination of the period of storage fixed by the warehouse receipt, or, if no period is fixed, within a stated period not less than 30 days after the notification. If the goods are not removed before the date specified in the notification, the warehouseman may sell them in accordance with the provisions of the statute on enforcement of a warehouseman's lien, discussed below.

C. Lien Rights

1. Miscellaneous Liens

Part II of Chapter 713, F.S., provides for miscellaneous liens, with s. 713.50, F.S., providing that the liens have priority over subsequently accruing liens. However, one such lien statute, s. 713.66, F.S., which provides for a lien on race horses or race dogs for feed provided for such animals, provides that the lien is superior to all other claims, liens, or mortgages, whether recorded or unrecorded, including a chattel mortgage on the animal. Another of these lien statutes, s. 713.585, F.S., requires notice to prior lienholders and allows these lienholders to file for a court hearing to determine priority.

Only one of the miscellaneous lien statutes provides for disposition of excess sale proceeds. Section 713.58, F.S., provides that if a person has a lien on a motor vehicle for performing labor on that motor vehicle, the person may enforce the lien by selling the motor vehicle. If the vehicle is sold and the proceeds are in excess of the amount needed to pay the lien, the lienor is to deposit the excess amount in the court registry for the benefit of the owner or of another lienholder. If no one claims these proceeds within a year and a day from the date of the sale, the proceeds are deemed abandoned property and are disposed of as provided in s. 705.103, F.S.

2. Warehouseman's Lien

Section 677.209, F.S., provides that a warehouseman has a lien against the bailor on the goods covered by a warehouse receipt for charges for storage, transportation, insurance, labor, or charges present or future in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for like charges or expenses in relation to other goods whenever deposited and it is stated in the receipt that a lien is claimed for charges and expenses in relation to other goods, the warehouseman also has a lien against him or her for such charges and expenses whether or not the other goods have been delivered by the warehouseman.

Section 677.210, F.S., provides for enforcement of the warehouseman's lien. A warehouseman's lien may be enforced by public or private sale of the goods at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. Such notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the warehouseman is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the warehouseman either sells the goods in the usual manner in any recognized market therefor, or if he or she sells at the price current in such market at the time of his or her sale, or if he or she has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold, he or she has sold in a commercially reasonable manner.

Before the sale, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred. In that event the goods must not be sold, but must be retained by the warehouseman subject to the terms of the receipt and chapter 677, F.S.

A purchaser in good faith of goods sold to enforce a warehouseman's lien takes the goods free of any rights of persons against whom the lien was valid, despite noncompliance by the warehouseman with the requirements of this section. The warehouseman may satisfy his or her lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom he or she would have been bound to deliver the goods. The warehouseman is liable for damages caused by failure to comply with the requirements for sale under this section and in case of willful violation is liable for conversion.

III. Effect of Proposed Changes:

Definitions

The bill provides the following definitions:

“Customer” means any person who causes a molder to fabricate, cast, or otherwise make a mold, or who provides a molder with a mold with which to manufacture, assemble, cast, fabricate, or otherwise make a product for a customer.

“Mold” means a die, mold, form, or pattern. The term does not include computer software used to control or direct automatic machines in a manufacturing process or dental impressions, molds, models, or study casts used by a dentist in the scope of his or her practice.

“Molder” means any person who fabricates, casts, or otherwise makes or uses a mold for the purpose of manufacturing, assembling, casting, fabricating, or otherwise making a product for a customer. The term includes a tool or die maker.

“Records” or “molder records” means documents created or held by a molder in its regular course of business.

“Unclaimed mold” means a mold which is in the custody of a molder, title to which remains in the customer who ordered or provided the mold, and which has not been used to make a product for at least 3 years.

Transfer of Title

The bill requires that molders maintain records of specified customer information which may be of use in locating and providing notice to a customer. The molder is also required to provide the customer with notice of the provisions of this statute and to provide the customer with a copy of

the statute upon request. The customer is required to keep the molder informed of any change in the customer's address.

The bill provides that a molder may acquire title to an unclaimed mold, i.e., a mold which has not been used to make a product for at least 3 years. To exercise this right, the molder must send written notice of the intent to acquire title to the customer and to any holder of a security interest in the mold which was perfected in this state. Notice is to be given to the customer by certified mail if the molder can identify the customer's last known address. If this cannot be done, notice is to be given by publication. The molder is required to make a search of UCC lien filings with the Florida Department of State, Division of Corporations, and, if the molder is able to identify a holder of a perfected security interest in the mold, the molder must provide notice of intent to acquire title to the mold by sending a notice by certified mail, return receipt requested, to the lienholder at the lienholder's last address of record with the Division. In all cases, the notice is to include a statement that the molder intends to acquire title to the mold, the date of mailing the notice, the name of the customer, a description of the mold in sufficient detail for clear identification, the beginning date of the use of the mold, the last date on which a purchase order was received for the use of the mold, the date on which the manufacture of the products for the purchase order was completed, the name and address of the appropriate molder official to be contacted regarding the mold, and a statement that within 90 days of the date of receipt of the notice of termination, the customer is required to remove the mold from the molder's premises or contact the designated official to make contractual arrangements for storage of the mold.

A molder acquires title to an unclaimed mold under any of the following circumstances:

1. For an unclaimed mold for which a molder provides notice to a customer by certified mail and a signed receipt is received, if the customer or anyone claiming a legal interest in the mold does not contact the molder and either remove the mold from the molder's premises or make contractual arrangements with the molder for storage of the mold within 90 days after the date notice was received.
2. For an unclaimed mold for which notice by publication is made, if the customer or anyone claiming a legal interest in the mold does not contact the molder and either remove the mold from the molder's premises or make contractual arrangements with the molder for storage of the mold within 90 days after the date of the second publication.

The molder and the customer can bind themselves to provisions different than the statutes by written contract.

The bill provides that these title transfer provisions do not affect the rights of a holder of a perfected security interest in a mold or any right of the customer under federal patent or copyright law or federal law relating to unfair competition.

A molder who acquires title to a mold by this statute passes good title when transferring the mold.

Lien Rights

The bill creates a lien for unpaid amounts due the molder for work and materials. The lien is on a mold in the possession of the molder which belongs to the customer owing the unpaid debt. The molder may retain the mold until the debts are paid.

Before enforcing the lien, the molder must notify the customer in writing that the molder claims a lien for the debts for specified manufacturing or fabrication work that has been performed for the customer. The notice must be delivered personally or sent by certified mail, return receipt requested, to the last known address of the customer. The notice must include a statement of the amount due, a demand for payment, and a statement of the location of the mold. It must also contain a warning in conspicuous type and in substantially the following form:

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

If the molder is not paid the amount due as stated in the notice within 60 days after the notice has been delivered, the molder may sell the mold at a public auction. However, the mold cannot be sold if there is a good faith dispute or litigation between the molder and the customer concerning either the quality of the products or the amount due. Additionally, before the molder may sell the mold, the molder must deliver a second notice to the customer and to any holder of a security interest perfected in this state of the intended sale. The notice must be sent by certified mail, return receipt requested. This notice must include: notice of the molder's intention to sell the mold 30 days after the customer's receipt of the notice; a description of the mold to be sold; the time and place of the sale; and an itemized statement of the amount due. If the receipt of the mailing is not returned or if the postal service returns the notice as being nondeliverable, the molder must publish notice, at least 30 days before the date of sale, in a newspaper of general circulation in the county of the customer's last known place of business of the molder's intent to sell the mold. The notice must include a description of the mold.

The proceeds of the sale must be paid first to any holder of a security interest perfected in this state. Any excess must be paid to the molder holding the lien created by this section. Any remaining amount is to be paid to the customer, if the customer's address is known, or to the state treasurer for deposit in the General Revenue Fund if the customer's address is unknown to the molder at the time of the sale.

If a sale would be in violation of any right of a customer under federal patent or copyright law, it cannot be conducted.

Application, Repeal, and Effective Date

Section 1 of the bill, the provisions on acquisition of title to unclaimed molds, applies only to contracts entered into before January 1, 1999, and repeals on January 1, 2001.

The bill takes effect July 1, 1998.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The provisions on acquisition of title to unclaimed molds apply to existing contracts. The Florida Constitution prohibits bills which impair the obligation of contracts. Art. I, s. 10, Fla. Const. The bill is subject to challenge pursuant to this prohibition, although the provisions on notice and the rights of the customer in response to that notice substantially diminish, if not avoid, any detriment to a customer.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

According to the proponents of the bill, many molders currently incur substantial costs in storing unclaimed molds. The bill provides these molders with a means to acquire title to and dispose of these molds, thus ending the storage costs. The provisions on notice to the customers owning the unclaimed molds require reasonable notice to these customers to allow them to reclaim the molds prior to disposition should they choose to do so.

Molders will also obtain the right to sell a mold to offset balances unpaid by the customer.

C. Government Sector Impact:

When the proceeds from the sale of a mold to satisfy a molder's lien exceed the amount of the perfected security interests and liens on that mold and the customer's address is unknown at the time of sale, the excess money is to be deposited into the General Revenue Fund.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
