

CHAPTER 98-215

House Bill No. 1403

An act relating to molders; providing definitions; providing obligations of molders to customers; providing procedures and conditions for acquisition of title to unclaimed molds; creating s. 713.596, F.S.; creating a molder's lien and specifying rights of a molder; providing definitions; providing procedures; providing for application and repeal; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Acquisition of title to unclaimed molds.—

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

(a) “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.

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

(c) “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.

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

(e) “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.

(2) OBLIGATIONS OF MOLDERS TO CUSTOMERS.—

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

1. Make and retain a written record containing, at a minimum, the customer's name, address, and telephone number, 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, and the date on which the manufacture of the products for the purchase order was completed.

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

3. Provide the customer with the following warning in conspicuous type and in substantially the following form:

WARNING: YOUR FAILURE TO MAKE TIMELY ARRANGEMENTS FOR THE DISPOSITION OF A MOLD UPON COMPLETION OF ITS USE BY THE MOLDER WILL RESULT IN A TRANSFER OF YOUR RIGHTS IN THAT MOLD TO THE MOLDER AS PROVIDED BY LAW.

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

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

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

3. Provide the customer with the following warning in conspicuous type and in substantially the following form:

WARNING: YOUR FAILURE TO MAKE TIMELY ARRANGEMENTS FOR THE DISPOSITION OF A MOLD UPON COMPLETION OF ITS USE BY THE MOLDER WILL RESULT IN A TRANSFER OF YOUR RIGHTS IN THAT MOLD TO THE MOLDER AS PROVIDED BY LAW.

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

(4) ACQUISITION OF TITLE TO UNCLAIMED MOLDS.—

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

(b) If the molder is able to identify the customer and the customer's last known address, the molder shall provide notice of intent to acquire title to an unclaimed mold by sending a notice by certified mail, return receipt requested, to the customer at the customer's last known address. The notice shall include 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 location of the mold, the name and address of the appropriate molder official to be contacted regarding the mold, and a statement that within 90 days after the date of receipt of the notice of intent to acquire title, 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.

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

(d) The molder must make a search of Uniform Commercial Code 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 shall 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. The notice shall contain all the information required by paragraph (b) which is available to the molder.

(5) MOLDER GAINING TITLE TO PROPERTY; CONDITIONS.—Beginning July 1, 1998, a molder acquires title to an unclaimed mold under any of the following circumstances:

(a) For an unclaimed mold for which a molder provides notice to a customer in accordance with paragraph (4)(b) and for which a signed receipt is received, if the customer or anyone having 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.

(b) For an unclaimed mold for which notice by publication is made pursuant to paragraph (4)(c), if the customer or anyone having 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.

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

(7) EFFECT ON OTHER RIGHTS.—This section does 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.

(8) TITLE OF PROPERTY ACQUIRED FROM A MOLDER.—A molder who acquires title to a mold under this section passes good title to another when transferring the mold with the intent to pass title.

Section 2. Section 713.596, Florida Statutes, is created to read:

713.596 Molder's liens.—

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

(a) “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.

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

(c) “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.

(2) LIENS.—

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

(b) Before enforcing the lien, the molder must notify the customer in writing of the claim of lien. The notice must be either delivered personally or sent by certified mail, return receipt requested, to the last known address of the customer. The notice must state that the molder claims a lien for the balance due for work that the molder has performed in manufacturing or fabricating products for the customer using the mold and for the value of related materials as is specified in the notice. Additionally, the notice must include a statement of the amount of the balance owed, a demand for payment, and a statement of the location of the mold. Finally, the notice must include the following 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.

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

(3) SALE.—

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

1. Notice of the molder's intent to sell the mold 30 days after the customer's receipt of the notice.
2. A description of the mold to be sold.
3. The time and place of the sale.
4. An itemized statement of the amount due.

(b) If there is no return of the receipt of the mailing 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 to be sold and the time and place of the sale.²

(c)1. 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.

2. A sale may not be made under this section if it would be in violation of any right of a customer under federal patent or copyright law.

Section 3. Section 1 of this act applies only to contracts entered into before January 1, 1999, and is repealed effective January 1, 2001.

Section 4. This act shall take effect July 1, 1998.

Became a law without the Governor's approval May 24, 1998.

Filed in Office Secretary of State May 22, 1998.