

CHAPTER 131

PROPERTY

HOUSE BILL 98-1323

BY REPRESENTATIVES Swenson, Entz, Salaz, and Sinclair;
also SENATORS Norton, B. Alexander, Chlouber, Matsunaka, and Tanner.

AN ACT

CONCERNING THE OWNERSHIP OF MOLDS USED IN THE MANUFACTURING PROCESS, AND, IN CONNECTION THEREWITH, ESTABLISHING A MOLDERS' LIEN.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 38-20-101, Colorado Revised Statutes, is amended to read:

38-20-101. Definitions. As used in this article, unless the context otherwise requires:

(1) ~~"Rent temporary shelter" or "rent temporary trailer space" means shelter or trailer space which is rented for a fee for a period of time not exceeding one month, but excluding month to month tenancies which have been in effect at least four months.~~ "CUSTOMER" MEANS ANY PERSON WHO:

(a) HIRES A MOLDER TO FABRICATE, CAST, OR OTHERWISE PREPARE A DIE, TOOL, MOLD, FORM, OR PATTERN FOR THE PURPOSE OF MANUFACTURING, ASSEMBLING, CASTING, FABRICATING, OR OTHERWISE MAKING A PRODUCT; OR

(b) PROVIDES A MOLDER WITH A DIE, TOOL, MOLD, FORM, OR PATTERN FOR THE PURPOSE OF MANUFACTURING, ASSEMBLING, CASTING, FABRICATING, OR OTHERWISE MAKING A PRODUCT.

(2) "MOLD" MEANS A DIE, TOOL, MOLD, FORM, OR PATTERN.

(3) "MOLDER" MEANS ANY PERSON WHO FABRICATES, CASTS, OR OTHERWISE PREPARES OR USES A DIE, TOOL, MOLD, FORM, OR PATTERN FOR THE PURPOSE OF MANUFACTURING, ASSEMBLING, CASTING, FABRICATING, OR OTHERWISE PREPARING A PRODUCT. "MOLDER" INCLUDES, BUT IS NOT LIMITED TO, A TOOL OR DIE MAKER.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

A MOLDER SHALL NOT BE DEEMED TO BE A WAREHOUSEMAN AS DEFINED IN SECTION 4-7-102, C.R.S.

(4) "RENT TEMPORARY SHELTER" OR "RENT TEMPORARY TRAILER SPACE" MEANS SHELTER OR TRAILER SPACE THAT IS RENTED FOR A FEE FOR A PERIOD OF TIME NOT EXCEEDING ONE MONTH, BUT EXCLUDING MONTH TO MONTH TENANCIES THAT HAVE BEEN IN EFFECT AT LEAST FOUR MONTHS.

SECTION 2. Part 1 of article 20 of title 38, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

38-20-106.2. Molders' liens - creation - notice. (1) A MOLDERS' LIEN SHALL ATTACH TO ALL OF A CUSTOMER'S MOLDS IN A MOLDER'S POSSESSION FOR WHICH A BALANCE IS DUE FROM SUCH CUSTOMER FOR ANY MANUFACTURING OR FABRICATION WORK PERFORMED AND MATERIALS FURNISHED. A MOLDERS' LIEN SHALL BE FOR THE AMOUNT DUE FOR ANY SUCH WORK PERFORMED OR MATERIALS FURNISHED, INCLUDING INTEREST AT THE RATE SPECIFIED IN SECTION 38-22-101 (5), UNLESS OTHERWISE AGREED, AND FOR ALL COSTS INCURRED IN ENFORCING SUCH LIEN, INCLUDING ATTORNEY FEES IF SPECIFIED BY CONTRACT. THE AMOUNT OF SUCH LIEN SHALL BE DETERMINED BY THE VALUE OF ANY SUCH MANUFACTURING OR FABRICATION WORK PERFORMED AND MATERIAL FURNISHED UNLESS THE COST OF SUCH WORK AND MATERIALS IS OTHERWISE SPECIFIED BY CONTRACT. A MOLDER MAY RETAIN POSSESSION OF A MOLD UNTIL ALL CHARGES ARE PAID FOR SUCH LIEN, UNLESS A CLAIM IS MADE TO SUCH MOLD BY THE HOLDER OF A PRIOR LIEN OR BY THE HOLDER OF A LIEN OF PUBLIC RECORD.

(2) A MOLDERS' LIEN CREATED PURSUANT TO THIS SECTION SHALL BE CONSIDERED A SECURITY INTEREST FOR THE PURPOSES OF SECTION 18-5-206, C.R.S.

(3) NO LIEN CREATED BY THIS SECTION SHALL HAVE PRIORITY OVER A LIEN OF PUBLIC RECORD, INCLUDING A LIEN FILED PURSUANT TO TITLE 4, C.R.S., REGARDLESS OF WHEN THE FINANCING STATEMENT OR NOTICE OF LIEN WAS FILED OR RECORDED.

SECTION 3. 38-20-107 (1), Colorado Revised Statutes, is amended to read:

38-20-107. Commencement of foreclosure action. (1) If any such charges for which a lien is given by section 38-20-102, 38-20-105, ~~or~~ 38-20-106, OR 38-20-106.2, or for which a lien is restored by section 38-20-106.5, are not paid within thirty days after the same become due and payable, the mechanic, innkeeper, agistor, or other person to whom such lien is given may file a foreclosure action in the county or district court of the county or city and county in which the contract or agreement between the lienholder and the owner of the property was signed or entered into, in which the owner resided at the time the contract or agreement was entered into, in which the owner resides at the time the foreclosure action is commenced or in which the work was performed, OR, IN THE CASE OF A LIEN CREATED PURSUANT TO SECTION 38-20-106.2, IN WHICH ANY WORK WAS PERFORMED OR MATERIALS WERE FURNISHED. In the event that the lienholder does not foreclose the lien by commencing a judicial action within sixty days and if under section 38-20-106 within ninety days after charges become due and payable, the lien shall terminate. However, such period of limitation may be extended by agreement between the parties for an additional period not to exceed thirty days. For the purposes of this subsection (1), if the

contract between the owner and the lienholder provides for installment or continuing payments, installments or continuing payments shall be deemed to be due after default of any installment or payment or at the time the final installment or payment is due and payable at the option of the lienholder.

SECTION 4. The introductory portion to 38-20-108 (1) and 38-20-108 (1) (a), Colorado Revised Statutes, are amended, and the said 38-20-108 (1) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

38-20-108. Foreclosure action - procedure. (1) In any foreclosure action, the lienholder or ~~his~~ THE LIENHOLDER'S attorney, by complaint, shall show to the court the following:

(a) That the lienholder did perform a specified service for the defendant which entitles ~~him~~ SUCH LIENHOLDER to a lien on personal property owned by the defendant pursuant to the provisions of section 38-20-102, 38-20-105, ~~or~~ 38-20-106, OR 38-20-106.2;

(g) AN ITEMIZED DESCRIPTION OF THE CHARGES FOR ANY WORK PERFORMED AND MATERIALS FURNISHED, INCLUDING INTEREST AT THE RATE SPECIFIED IN SECTION 38-22-101 (5), UNLESS OTHERWISE AGREED, AND FOR ALL COSTS INCURRED IN ENFORCING SUCH LIEN, INCLUDING ATTORNEY FEES IF SPECIFIED BY CONTRACT IF A LIEN IS CLAIMED UNDER SECTION 38-20-106.2.

SECTION 5. 38-20-116, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

38-20-116. Abandoned property defined - notice of sale. (3) (a) THE FOLLOWING PROVISIONS SHALL APPLY TO MOLDS, AS DEFINED IN SECTION 38-20-101:

(I) IN THE ABSENCE OF AN AGREEMENT TO THE CONTRARY, A CUSTOMER SHALL HAVE ALL RIGHTS AND TITLE TO ANY MOLD IN THE POSSESSION OF A MOLDER THAT WAS USED TO PERFORM WORK FOR SUCH CUSTOMER; EXCEPT THAT, IF A CUSTOMER HAS NOT CLAIMED POSSESSION OF A MOLD WITHIN THREE YEARS FOLLOWING ITS LAST PRIOR USE, SUCH MOLD SHALL BE PRESUMED TO BE ABANDONED BY THE CUSTOMER AND ALL RIGHTS AND TITLE TO SUCH MOLD SHALL BE TRANSFERRED TO THE MOLDER WHO SHALL DESTROY OR OTHERWISE DISPOSE OF SUCH MOLD AS ABANDONED PROPERTY IN ACCORDANCE WITH THIS SECTION. FOR PURPOSES OF THIS SUBSECTION (3), "WITHIN THREE YEARS FOLLOWING ITS LAST PRIOR USE" MEANS ANY PERIOD FOLLOWING THE LAST PRIOR USE OF THE MOLD AND INCLUDES PERIODS PRECEDING THE EFFECTIVE DATE OF THIS SECTION.

(II) ANY MOLDER WHO DESIRES TO HAVE ALL RIGHTS AND TITLE TO A MOLD SHALL SEND WRITTEN NOTICE TO THE CUSTOMER'S LAST-KNOWN ADDRESS BY REGISTERED OR CERTIFIED MAIL RETURN RECEIPT REQUESTED, SIGNED BY THE ADDRESSEE ONLY. IF THE WRITTEN NOTICE IS RETURNED UNCLAIMED, THE MOLDER SHALL PUBLISH SAID NOTICE AT LEAST ONE DAY IN A NEWSPAPER OF GENERAL CIRCULATION IN THE AREA IN WHICH THE MOLD IS LOCATED. SUCH WRITTEN NOTICE SHALL CLEARLY INDICATE THAT THE MOLDER INTENDS TO TERMINATE THE CUSTOMER'S RIGHTS AND TITLE TO THE MOLD DESCRIBED IN SUCH NOTICE AND SHALL INCLUDE A RECITATION OF THE CUSTOMER'S RIGHTS, AS SET FORTH IN THIS SECTION.

(III) IF A CUSTOMER DOES NOT RESPOND TO THE WRITTEN NOTICE SENT PURSUANT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH (a) WITHIN ONE HUNDRED TWENTY DAYS AFTER THE DATE OF SUCH NOTICE TO CLAIM POSSESSION OF THE MOLD OR DOES NOT MAKE OTHER CONTRACTUAL ARRANGEMENTS WITH THE MOLDER FOR STORAGE OF SUCH MOLD, ALL RIGHTS AND TITLE OF THE CUSTOMER TO SUCH MOLD SHALL TRANSFER TO THE MOLDER. SUCH MOLDER MAY THEN DESTROY OR OTHERWISE DISPOSE OF THE MOLD WITHOUT RISK OF LIABILITY TO THE CUSTOMER.

(IV) THE MOLDER SHALL MAINTAIN IN SUCH MOLDER'S RECORDS FOR A PERIOD OF ONE YEAR A COPY OF THE NOTICE SENT PURSUANT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH (a), TOGETHER WITH THE RETURN RECEIPT SIGNED BY THE ADDRESSEE, OR, IF SAID NOTICE IS RETURNED UNCLAIMED, SAID NOTICE AND THE PROOF OF RETURN UNCLAIMED SHALL BE SO MAINTAINED.

(b) NOTHING IN THIS SUBSECTION (3) SHALL REQUIRE A MOLDER TO COMMENCE A JUDICIAL ACTION TO FORECLOSE ON A MOLDERS' LIEN IF SUCH MOLD IS ABANDONED, AS SUCH TERM IS DEFINED IN THIS SECTION, AND NOTHING IN THIS SUBSECTION (3) SHALL BE INTERPRETED TO ELIMINATE ANY RIGHT OF ACTION A MOLDER MAY HAVE AGAINST A CUSTOMER FOR UNPAID CHARGES, DAMAGES, COSTS, OR ATTORNEY FEES, IF PROVIDED FOR BY CONTRACT.

SECTION 6. Effective date - applicability. (1) This act shall take effect September 30, 1998, unless a referendum petition is filed during the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution. If such a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, shall take effect on the specified date only if approved by the people.

(2) The provisions of this act shall apply to dies, molds, forms, and patterns held by a molder on or after the applicable effective date of this act.

Approved: April 20, 1998