# *2005 DRAFTING REQUEST*

## Bill

Received: **09/12/2005**

Received By: **mkunkel**

Wanted: **As time permits**

Identical to LRB:

For: **Alberta Darling (608) 266-5830**

By/Representing: **Connie**

This file may be shown to any legislator: **NO**

Drafter: **mkunkel**

May Contact:

Addl. Drafters:

Subject: **Liens**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Darling@legis.state.wi.us**

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Special tools liens

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**Instructions:**

Draft companion to LRB-0927

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**Drafting History:**

| Vers. | Drafted | Reviewed | Typed | Proofed | Submitted | Jacketed | Required |
|---|---|---|---|---|---|---|---|
| /? | mkunkel 09/12/2005 | wjackson 09/12/2005 | | _____ _____ | | | |
| /1 | | | pgreensl 09/13/2005 | _____ _____ | lnorthro 09/13/2005 | lnorthro 09/14/2005 | |

FE Sent For:

**<END>**

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|---|---|---|---|---|---|---|---|
| /? | mkunkel | /1 wlj 9/12 | 9/12 pg | 9/12 sub | | | |

FE Sent For:

**<END>**

LRB-0927/2
MDK:wlj:pg

# 2005 BILL

AN ACT *to repeal and recreate* 779.48 (title); and *to create* 779.485 of the statutes; **relating to:** liens for metal fabrication tool builders and metal parts manufacturers and destruction of metal fabrication tools.

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***Analysis by the Legislative Reference Bureau***

Under current law, a plastics fabricator is granted a lien on toolings in the fabricator's possession that belong to a customer for amounts that the customer owes the fabricator for the toolings or for plastic fabrication work. Current law also allows, under certain circumstances, a plastics or cast metal molder to dispose of forms provided by a customer that the customer has not claimed within three years after the molder's last use of the form. This bill creates similar provisions for "special tools," which the bill defines as any tool, die, jig, gauge, gauging fixture, metal casting, pattern, forging, machinery, ferrous or nonferrous machined part, or intellectual property used for the purpose of designing, developing, manufacturing, assembling, or fabricating a metal part.

***Special tool builder's lien.*** Under the bill, a "special tool builder" who satisfies certain requirements is granted a lien in the amount that a "manufacturer" or "customer" owes the special tool builder for designing, developing, manufacturing, assembling, repairing, or modifying a special tool. The bill defines "special tool builder" as a person who makes a special tool, a "manufacturer" as a person who uses a special tool in a manufacturing process, and a "customer" as a person who does any of the following: 1) causes a special tool builder to make a special tool; 2) orders a product from a manufacturer that is produced with a special tool; or 3) causes a manufacturer to use a special tool.

The bill grants a special tool builder a lien if the special tool builder permanently records the builder's name and address on the special tool, or other traceable identification, and files a financing statement for the special tool under the state's version of Article IX of the Uniform Commercial Code (Article IX), which covers secured transactions. The lien is attached on the date that both of the foregoing requirements are satisfied, which means that on that date the special tool builder has lien rights that may be enforced against the manufacturer or customer. The lien is also perfected on that date, which means that the special tool builder's lien has priority over other liens and security interests in the special tool that are perfected after that date. The bill provides that the lien remains valid until either: 1) the manufacturer or customer pays the special tool builder the amount for which the lien is claimed; or 2) the financing statement is terminated under Article IX.

The bill allows a special tool builder to enforce a lien by any available judicial procedure, or by taking possession of the special tool without judicial process, but only if the taking is done without breach of the peace. Before enforcing the lien, a special tool builder must provide written notice, delivered personally or by registered mail, to the manufacturer or customer that the special tool builder demands payment for the amount claimed. (If the claim is against both the manufacturer and customer, the special tool builder must notify both.) If the special tool builder is not paid within 90 days after receipt of the notice, the special tool builder may enforce the lien. However, if mailed notice is returned as undeliverable, the bill requires the special tool builder to publish a legal notice before the builder may enforce the lien.

***Manufacturer's lien.*** The bill also grants a lien to a manufacturer in a special tool belonging to a customer that a customer causes the manufacturer to use. The amount of the lien is the amount due to the manufacturer from the customer for any worked performed with the special tool or for making or improving the special tool. The manufacturer is allowed to retain possession of the special tool until the amount due is paid. The bill allows a manufacturer to enforce a lien by selling the special tool at public auction, but only after satisfying written notice and legal publication requirements that are similar to the requirements described above for special tool builders. Also, the bill prohibits a public auction if the customer claims that any product produced by the manufacturer with the special tool did not comply with the quality and quantity ordered by the customer. A public auction may not take place until such a claim is resolved. If there is a public auction, the proceeds are first paid to any prior holder of a lien in the special tool (such as, for example, a special tool builder) and then paid to the manufacturer to satisfy the manufacturer's lien. Any remaining proceeds are paid to the customer.

***Right to destroy special tools.*** Unless otherwise agreed in writing by a manufacturer and a customer, the bill allows a manufacturer, under certain circumstances, to destroy a customer's special tool that the manufacturer has used to produce parts ordered by the customer or that the customer has caused the manufacturer to use. A manufacturer may destroy a customer's special tool if all of the following are satisfied: 1) the special tool has been in the manufacturer's possession for one year after the manufacturer's last use of the tool; 2) the customer has not claimed possession of the special tool during that year; and 3) the

manufacturer complies with requirements specified in the bill for providing notice to the customer 120 days before the manufacturer intends to destroy the tool. If the notice requirements are satisfied and the customer has not claimed possession of the special tool or agreed to arrangements for storage of the special tool, the bill transfers the customer's interest in the tool to the manufacturer for the purpose of destroying the tool.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

**SECTION 1.** 779.48 (title) of the statutes is repealed and recreated to read:

**779.48** (title) **Enforcement.**

**SECTION 2.** 779.485 of the statutes is created to read:

**779.485 Special tools. (1)** DEFINITIONS. In this section:

(a) "Customer" means a person who does any of the following:

1. Causes a special tool builder to design, develop, manufacture, assemble, or otherwise make a special tool.

2. Orders a product from a manufacturer that is produced with a special tool or causes a manufacturer to use a special tool.

(b) "Intellectual property" means a design, program, or process.

(c) "Manufacturer" means a person who uses a special tool as part of the person's manufacturing process.

(d) "Manufacturer's lien" means a lien described in sub. (3) (b).

(e) "Special tool" means a tool, die, jig, gauge, gauging fixture, metal casting, pattern, forging, machinery, ferrous or nonferrous machined part, or intellectual property used for the purpose of designing, developing, manufacturing, assembling, or fabricating a metal part.

(f) "Special tool builder" means a person who designs, develops, manufactures, fabricates, or assembles a special tool.

(g) "Special tool builder's lien" means a lien described in sub. (2) (a) 1.

**(2)** SPECIAL TOOL BUILDERS. (a) *Lien.* 1. A special tool builder who does all of the following has a lien on a special tool in the amount that a customer or manufacturer owes the special tool builder for designing, developing, manufacturing, fabricating, assembling, repairing, or modifying the special tool:

a. Permanently records on the special tool the special tool builder's name, street address, city, and state, or other traceable identification.

b. Files a financing statement for the special tool under subch. V of ch. 409.

2. A special tool builder's lien attaches and is perfected on the date that both of the requirements specified in subd. 1. a. and b. are satisfied.

3. A special tool builder retains a special tool builder's lien even if the special tool builder does not have physical possession of the special tool for which the lien is claimed.

4. A special tool builder's lien remains valid until the first of any of the following occurs:

a. The customer or manufacturer pays the special tool builder the amount for which the special tool builder's lien is claimed.

b. The financing statement is terminated.

(b) *Priority.* An attached and perfected special tool builder's lien has priority over any other lien that subsequently attaches to the special tool.

(c) *Enforcement.* 1. A special tool builder may not enforce a special tool builder's lien unless the builder provides notice in writing to the customer, manufacturer, or both that owes the builder the amount for which the special tool builder's lien is claimed. The notice shall be delivered personally or by registered mail, return receipt requested, to the last–known address of the customer,

manufacturer, or both and shall state that the builder is claiming a lien for the amount that customer, manufacturer, or both owes the special tool builder for designing, developing, manufacturing, fabricating, assembling, repairing, or modifying the special tool and that the builder demands payment for the amount. Except as provided in subd. 2., if the special tool builder is not paid the amount claimed within 90 days after either the customer or, if applicable, the manufacturer receives the notice, whichever is later, the builder has the right to possession of the special tool and the builder may enforce the right by any available judicial procedure or by taking possession of the special tool without judicial process, but only if the taking is done without breach of the peace.

2. If the postal service returns any notice required under subd. 1. as undeliverable, the special tool builder may enforce the right to possession under subd. 1. no sooner than 90 days after the special tool builder publishes, under ch. 985, a class 1 notice of the intended enforcement of the right to possession in a newspaper of general circulation in the place where the special tool is last known to be located and in the place of the last–known address of any person for which the postal service returns a notice as undeliverable.

**(3)** MANUFACTURERS. (a) *Transfer of interest.* 1. Unless otherwise agreed by a customer and manufacturer in writing, all rights, title, and interest of a customer in a special tool that a manufacturer has used to produce parts ordered by the customer or that the customer has caused a manufacturer to use are transferred to the manufacturer for the purpose of destroying the special tool, if all of the following are satisfied:

a. The special tool has been in the possession of the manufacturer during the one–year period beginning after the manufacturer's last use of the special tool.

b. The customer has not claimed possession of the special tool before the expiration of the one–year period specified in subd. 1. a.

c. After the expiration of the one–year period specified in subd. 1. a., the manufacturer provides written notice by registered mail, return receipt requested, to an address designated in writing by the customer or, if the customer has made no such designation, to the customer's last–known address, that indicates that the manufacturer intends to terminate the customer's rights, title, and interest in the special tool and transfer those rights, title, and interest to the manufacturer as provided in this paragraph.

d. The customer has not, within 120 days after the date that the manufacturer receives the return receipt of notice specified in subd. 1. c. or within 120 days after the customer provides notice if no return receipt is received within that period, claimed possession of the special tool or agreed to other arrangements with the manufacturer for storage of the special tool.

2. The one–year period specified in subd. 1. a. applies retroactively to special tools last used before the effective date of this subdivision .... [revisor inserts date].

3. This paragraph does not apply to a special tool that is titled to, and in the possession of, a manufacturer. This paragraph may not be construed to grant a customer any right, title, or interest in a special tool.

(b) *Lien.* A manufacturer has a lien on any special tool in the manufacturers' possession belonging to a customer for the amount due the manufacturer from the customer for work performed with the special tool or for making or improving the special tool. A manufacturer may retain possession of the special tool until the amount due is paid.

(c) *Enforcement.* 1. A manufacturer may not enforce a manufacturers' lien unless the manufacturer provides notice in writing to the customer, delivered personally or by registered mail to the last–known address of the customer, that states that the manufacturer is claiming a lien for the amount due described in par. (b). Except as provided in subd. 2., if the manufacturer is not paid the amount due within 90 days after the customer receives the notice, and if the manufacturer is still in possession of the special tool, the manufacturer may sell the special tool at public auction under par. (d).

2. If the postal service returns a notice under subd. 1. as undeliverable and if the manufacturer is still in possession of the special tool, the manufacturer may sell the special tool at public auction under par. (d) no sooner than 90 days after the special tool builder publishes, under ch. 985, a class 1 notice of the sale in a newspaper of general circulation in the place of the last–known address of the customer.

(d) *Public auction.* 1. A manufacturer may not sell a special tool at public auction unless the manufacturer has provided, by registered mail, return receipt requested, the customer and any other person, including a special tool builder, who has perfected by filing a security interest in the special tool, a notice that includes all of the following:

a. A statement that the manufacturer intends to sell the special tool no sooner than 60 days after receipt of the notice.

b. A description of the special tool.

c. The time and place of the public auction.

d. An itemized statement of the amount for which the manufacturer's lien is claimed.

e. A statement that any product produced by the manufacturer with the special tool complies with the quality and quantity ordered by the customer.

2. Except as provided in subd. 3., a manufacturer may sell a special tool at public auction no sooner than 60 days after the customer's or other person's receipt of the notice specified in subd. 1., whichever is later, except that, if the postal service returns any of the notices as undeliverable, the manufacturer may sell the special tool no sooner than 60 days after the manufacturer publishes, under ch. 985, a class 1 notice of the intended sale, that includes the information specified in subd. 1., in a newspaper of general circulation in the place where the manufacturer is holding the special tool for sale, in the place of the customer's last–known address, and in the place of the other person's last–known address.

3. If a customer disagrees with the statement specified in subd. 1. e. that is included in a notice, the customer may notify the manufacturer of the disagreement in writing by registered mail, return receipt requested. If a manufacturer receives a notification under this subdivision before the date of the public auction, the manufacturer may not sell the special tool at public auction until after the disagreement is resolved.

(e) *Proceeds.* The proceeds of a sale of a special tool under par. (d) shall, if applicable, first be paid to a prior lienholder who has perfected a lien in an amount sufficient to extinguish that lien. Any excess proceeds shall next be paid to the manufacturer in an amount sufficient to extinguish the manufacturer's lien. Any remainder shall be paid to the customer.

**(END)**

# DRAFTER'S NOTE
## FROM THE
## LEGISLATIVE REFERENCE BUREAU

LRB–3641/1dn
MDK:...:...
WLJ

Sen. Darling:

This is a companion bill to LRB–0927/2.

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266–0131
E–mail: mark.kunkel@legis.state.wi.us

# DRAFTER'S NOTE
## FROM THE
## LEGISLATIVE REFERENCE BUREAU

LRB–3641/1dn
MDK:wlj:pg

September 12, 2005

Sen. Darling:

This is a companion bill to LRB–0927/2.

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266–0131
E–mail: mark.kunkel@legis.state.wi.us

## Northrop, Lori

**From:** Lindsay, Ben
**Sent:** Wednesday, September 14, 2005 3:11 PM
**To:** LRB.Legal
**Subject:** Draft review: LRB 05-3641/1 Topic: Special tools liens

It has been requested by <Lindsay, Ben> that the following draft be jacketed for the SENATE:

Draft review: LRB 05-3641/1 Topic: Special tools liens