

**SUBJECT:** Liens to secure payment of restitution, fines or costs

**COMMITTEE:** Criminal Jurisprudence — favorable, without amendment

**VOTE:** 7 ayes — Place, Talton, Greenberg, Nixon, Pickett, Pitts, Solis  
0 nays  
2 absent — Farrar, Hudson

**SENATE VOTE:** On final passage, April 19 — voice vote (Rosson recorded nay)

**WITNESSES:** No public hearing

**DIGEST:** SB 494 would add art. 42.21 to the Code of Criminal Procedure to provide for restitution liens. A victim of a criminal offense could request a restitution lien to secure the amount of restitution ordered to be paid to the victim in a criminal case. In addition, the state, and any political subdivision thereof, could impose a restitution lien to secure the amount of fines or costs assessed in the judgment against a felony criminal defendant.

**Property subject to lien.** A restitution lien would extend to:

- any interest of the defendant in real property then owned, or after-acquired in a county in which the lien was perfected;
- any interest of the defendant in tangible or intangible personal property, then owned or after-acquired, if perfected by the filing of the affidavit with the secretary of state; or
- any interest in a motor vehicle, then owned or after-acquired, if the lien was perfected by filing an affidavit with the Texas Department of Transportation.

**Perfection of lien.** A restitution lien would be perfected when an affidavit to perfect the lien was filed in accordance with the statute. A victim in a criminal case or an attorney representing the state in a criminal case, in which restitution was ordered for the victim or in which the defendant was

ordered to pay fines or costs, could file an affidavit to perfect a restitution lien.

**Notice.** The person filing the affidavit would have to notify in writing the clerk of the court entering the judgment creating the lien of all officers or entities with which the affidavit was filed. The clerk of the court entering the judgment creating the restitution lien would be required to maintain a record of the outstanding balance of restitution, fines, or costs owed. If the defendant satisfied the judgment, the clerk would immediately notify, in writing, all officers or entities with which the affidavit perfecting the lien was filed.

**Contents of affidavit.** The affidavit would have to be signed by the attorney representing the state or a magistrate and would have to contain:

- the name and date of birth of the defendant;
- the residence or principal place of business of the person named in the lien, if known;
- the criminal proceeding giving rise to the lien, including the name of the court, the name of the case, and the court's file number for the case;
- the name and address of the attorney representing the state and the name of the person entitled to restitution;
- a statement that the notice was being filed under this article;
- the amount of restitution and the amount of fines and costs the defendant had been ordered to pay by the court; and
- a statement that the amount of restitution owed at any one time may be less than the original balance and that the outstanding balance was reflected in the records of the clerk of the court hearing the criminal proceeding giving rise to the lien.

**Filing of affidavit.** The affidavit could be filed with:

- the secretary of state;
- the Texas Department of Transportation (TxDOT); or
- the county clerk of the county in which the crime was committed, the defendant resided, or the property was located.

The uniform fee for filing and indexing and for stamping a copy furnished by the state or victim to show the date and place of filing would be \$5. The secretary of state would deposit the filing fee in the state treasury to the credit of the statutory filing fund to defray costs of administration of this subsection. TxDOT would deposit the filing fee in the state treasury to the credit of the state highway fund to defray costs of administering this section.

The county clerk would immediately record the restitution lien in the judgment records of the county. Likewise, the secretary of state would have to file the restitution lien in the security interest and financing statement records of the secretary of state. TxDOT would be required to immediately file the restitution lien in the motor vehicle records of the department. All would have to note the date and hour the lien was received.

When a restitution lien was filed, the county clerk, secretary of state, or TxDOT would be required to enter the restitution lien in an alphabetical index to the records in which the lien was filed showing:

- the name of the person entitled to restitution;
- the name of the defendant obligated to pay restitution, fines, or costs;
- the amount of the lien; and
- the name of the court that ordered restitution.

**Priority.** The perfection of a restitution lien under this article would be notice of the claim to all persons dealing with the defendant or the property identified in the affidavit perfecting the lien. A perfected lien in favor of a victim was superior and prior to a lien perfected by the state under this article. The perfected lien in favor of the state would be superior and prior to the claim or interest of any other person, other than:

- a person who possessed a valid lien or security interest perfected before the perfection of the restitution lien;
- a bona fide purchaser who acquired an interest in the property, if personal property, before the filing of the restitution lien, to the extent that the purchaser gives value; or
- a bona fide purchaser who acquired and recorded an interest in the property, if real property, before the perfection of the restitution lien, to the extent that the purchaser gives value.

**Payment.** The county clerk or other agency receiving a payment from a defendant ordered to pay restitution would have to make payments to the person having an interest in the restitution lien on a schedule of not less than quarterly payments as determined by the clerk or agency.

**Foreclosure.** If a defendant failed to timely make a payment, the person having an interest in the lien could file suit to foreclose the lien. If the defendant cured the default within 20 days after the date the suit was filed and paid the person who filed the suit court costs and reasonable attorney's fees, the court could dismiss the suit without prejudice to the person. The person could refile the suit against the defendant if the defendant subsequently defaulted.

**Expiration.** A restitution lien would expire on the 10th anniversary of the date the lien was filed or on the date the defendant satisfied the judgment creating the lien, whichever occurred first. A person could refile the lien before expiration. Failure to execute or foreclose the restitution lien would not cause dormancy of the lien.

**Effective date.** The act would take effect September 1, 1996.

**SUPPORTERS  
SAY:**

Although many offenders are ordered to pay restitution to victims for property damage or medical expenses sustained during an offense, the defendants often never pay. The victim is no better off than before the judgment was rendered. SB 494 would give the victim a means of collecting on the deserved restitution.

Many recent cases have amplified the need for implementation of restitution liens. In a particularly frustrating case, a court ordered that restitution be paid to a business from a defendant who wrote bad checks. The defendant never paid the restitution, even though the defendant had a expensive car and a conspicuous amount of cash. This bill would also allow a lien to be placed on intangible property, such as book and movie rights.

Neither TxDOT nor the secretary of state would suffer financially. Although the probable cost out of the state highway fund would be greater initially because of start-up costs, the fiscal note indicates the gain due to the \$5 filing fee would significantly overcome the cost in subsequent years. The bill would have a neutral effect on the statutory filings fund.

**OPPONENTS  
SAY:**

Allowing the state and victims to file restitution claims would unduly burden defendants struggling to go straight and get back on their feet. A defendant generally fails to pay court costs or restitution not out of belligerence, but because the defendant is truly not able to pay. In addition, taking a defendant's car would make it very difficult for the defendant to go to work almost anywhere in Texas, a state with limited mass transit options.

With one hand the state would be encouraging the person to lead a productive life without crime and with the other hand would take away the person's car, essentially preventing them from leading a productive life. Moreover, most of the "victims" the state would be protecting would be insurance companies who would hound a defendant trying to make a new life.