

BILL ANALYSIS

Senate Research Center

H.B. 2830
By: Place (Bivins)
Criminal Justice
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Engrossed

DIGEST

In 1995, the legislature added Article 42.21 to the Code of Criminal Procedure, which provides a mechanism for the attachment of a lien against certain property of a person who has been found guilty of a crime and whose punishment includes either restitution to the victim of the crime for which he or she has been convicted, or payment of a fine to the state, or both. The lien is in favor of the victim, in the case of restitution, or the state, in the case of a lien to secure payment of the fine. Concern has been raised regarding the unintended consequences of this article, including its failure to provide a mechanism for the giving of adequate notice of liens attached to motor vehicles; the conflict it creates with certain lien perfection provisions of the Transportation Code; and the confusion regarding the priority of liens. H.B. 2830 addresses these problems by establishing an express procedure applicable to the perfection of the lien when it is attached to a motor vehicle; upgrading the procedures applicable to providing notice of the existence of the lien when attached to a motor vehicle; and by conditioning application of this article to motor vehicles on the adoption of the Texas Department of Transportation's automated registration and title system. This legislation also provides that the restitution lien is inferior to a perfected real estate mortgage lien, a vendor's lien, a purchase money security interest, a lien on a motor vehicle perfected under Chapter 501, Transportation Code, and a worker's lien perfected in the manner provided by law.

PURPOSE

As proposed, H.B. 2830 establishes provisions regarding a statutory lien to secure the amount of restitution to which a crime victim is entitled.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 42.21, Code of Criminal Procedure, as added by Section 1, Chapter 997, Acts of the 74th Legislature, Regular Session, 1995, as follows:

Art. 42.21. RESTITUTION LIENS

Sec. 1. DEFINITIONS. Redefines "motor vehicle."

Sec 2. LIEN ESTABLISHED. Makes no change.

Sec. 3. PERFECTION. Requires a lien established under this article which is attached to a motor vehicle to be perfected in the manner provided by Chapter 501, Transportation Code. Requires the court that entered the order of restitution giving rise to the lien to include in the order a requirement that the defendant surrender to the court evidence of current legal ownership of the motor vehicle and the title, if applicable. Sets forth the terms by which a lien is perfected. Makes a conforming change.

Sec. 4. JUDGMENT REQUIRED. Makes no change.

Sec. 5. PERSONS WHO MAY FILE. Makes no change.

Sec. 6. AFFIDAVIT. Requires an affidavit to perfect a restitution lien to be signed by the attorney representing the state or a magistrate, and to contain the vehicle description and vehicle identification number. Makes conforming changes.

Sec. 7. FILING. Authorizes an affidavit to perfect a restitution to be filed with the Texas Department of Transportation (department) in the manner provided by Chapter 501, Transportation Code. Deletes existing text requiring the department, when a restitution lien is filed, to enter the lien in a certain manner.

Sec. 8. SUBJECT PROPERTY. Makes no change.

Sec. 9. PRIORITY. Sets forth the terms by which, without regard to whether perfected before or after the perfection of a restitution lien filed and perfected under this article, certain liens and security interests are superior and prior to a restitution lien filed and perfected under this article. Deletes existing text regarding a person who acquires a valid lien or security interest secured by a vendor's lien.

Sec. 10. PAYMENT. Deletes existing text requiring another agency receiving a payment from a defendant ordered to pay restitution to make certain payments to the person having an interest in the restitution lien.

Sec. 11. FORECLOSURE. Makes no change.

Sec. 12. EXPIRATION; RECORDS. Makes no change.

SECTION 2. Provides that the procedures and provisions regarding establishment of a restitution lien against a motor vehicle do not apply until all counties have implemented the department automated registration and title system.

SECTION 3. Emergency clause.

Effective date: upon passage.