

13-806. Restitution lien

A. The state, ON BEHALF OF A PERSON ENTITLED TO RESTITUTION PURSUANT TO A COURT ORDER, or any person entitled to restitution pursuant to a court order may file in accordance with this section a restitution lien.

NOTWITHSTANDING ANYTHING ELSE IN THIS TITLE TO THE CONTRARY, A RESTITUTION LIEN SHALL NOT BE CREATED IN FAVOR OF THE STATE FOR THE TOTAL AMOUNT OF FINES, SURCHARGES, ASSESSMENTS, COSTS, INCARCERATION COSTS AND FEES IMPOSED UPON A CRIMINAL DEFENDANT IN ANY CRIMINAL PROCEEDING. A RESTITUTION LIEN MAY ONLY BE UTILIZED TO COLLECT THE RESTITUTION OWED TO A CRIME VICTIM WHICH IS THE SUBJECT OF A CRIMINAL RESTITUTION ORDER ENTERED BY A COURT OF COMPETENT JURISDICTION. A filing fee or any other charge is not required for filing a restitution lien.

B. A restitution lien shall be signed by the attorney representing the state in the criminal action or by a magistrate and shall set forth all of the following information:

1. The name and date of birth of the defendant whose property or other interests are subject to the lien.
2. The present residence or principal place of business of the person named in the lien, if known.
3. The criminal proceeding pursuant to which the lien is filed, including the name of the court, the title of the action and the court's file number.
4. The name and address of the attorney representing the state in the proceeding pursuant to which the lien is filed or the name and address of the person entitled to restitution pursuant to a court order filing the lien.
5. A statement that the notice is being filed pursuant to this section.
6. The amount of restitution the defendant in the proceeding has been ordered to pay or an estimated amount of economic loss caused by the offense alleged in the proceeding if no restitution order has been entered yet.

7. A statement that the total amount of restitution owed will change and that the clerk of the court in which the proceeding was or is pending shall maintain a record of the outstanding balance.

C. A restitution lien may be filed by:

1. A prosecutor in a criminal proceeding in which there was an economic loss after the filing of a misdemeanor complaint or felony information or indictment. At the time of arraignment the prosecutor shall give the defendant notice of any restitution lien filed.

2. A victim in a criminal proceeding after restitution is determined and ordered by the trial court following pronouncement of the judgment and sentence.

D. A restitution lien ~~is~~ SHALL BE perfected ~~against interests~~ in THE FOLLOWING WAYS:

1. WITH REGARD TO personal property, by filing the lien with the secretary of state, WHICH SHALL ADD SUCH LIEN TO THE SEARCHABLE INDEX OF UCC LIENS MAINTAINED BY THE SECRETARY OF STATE.

2. ~~except that in the case of~~ WITH REGARD TO titled motor vehicles, ~~it shall be filed~~ BY FILING THE LIEN with the department of transportation motor vehicle division WHICH SHALL ADD SUCH LIEN TO A SEARCHABLE INDEX OF LIENS ON VEHICLES MAINTAINED BY THE DEPARTMENT OF TRANSPORTATION MOTOR VEHICLE DIVISION AND SHALL ADD SUCH LIEN TO ANY FUTURE CERTIFICATE OF TITLE ISSUED IN THE NAME OF A CRIMINAL DEFENDANT SUBJECT TO A RESTITUTION LIEN.

3. WITH REGARD TO ~~A restitution lien is perfected against interests in~~ real property, by ~~filing~~ RECORDING the lien with the county recorder of the county in which ~~the~~ real property OWNED BY THE CRIMINAL DEFENDANT SUBJECT TO THE RESTITUTION LIEN is located. ~~The state or a victim may give the additional notice of the lien as either deems appropriate.~~

E. SUBJECT TO THE PROVISIONS OF SUBSECTION F, ~~the~~ filing of a restitution lien in accordance with this section creates a lien in favor of ~~the state or~~ the victim OF A CRIME FROM AND AFTER THE DATE OF THE FILING OR RECORDING OF SUCH LIEN in all of the following:

1. Any interest of the defendant in real property situated in the county in which the lien is ~~filed~~ RECORDED then maintained or thereafter acquired in the name of the defendant identified in the lien.

2. Any interest of the defendant in personal property situated in this state then maintained or thereafter acquired in the name of the defendant identified in the lien.

3. Any property identified in the lien to the extent of the defendant's interest in the property.

F. The filing of a restitution lien under this section is notice to all persons dealing with the person or property identified in the lien of the state's or victim's claim. The lien created in favor of ~~the state or~~ the victim OF A CRIME in accordance with this section is superior and prior to the claims or interests of any other person, except a person possessing any of the following:

1. A valid lien perfected before the filing of the restitution lien.

2. In the case of real property, an interest acquired and recorded before the filing of the restitution lien.

3. In the case of personal property, an interest acquired before the filing of the restitution lien.

4. A BONA FIDE PURCHASER FOR VALUE OF REAL OR PERSONAL PROPERTY, WHO ACQUIRES THE REAL OR PERSONAL PROPERTY WITH NO KNOWLEDGE OF THE RESTITUTION LIEN.

G. This section does not limit the right of the state or any other person entitled to restitution to obtain any order or injunction, receivership, writ, attachment, garnishment or other remedy authorized by law.

~~H. Following the entry of the judgment and sentence in the criminal case, if the trial court sentences the defendant to pay a fine or awards costs of investigation or prosecution, the state may file a restitution lien pursuant to this section for the amount of the fine or costs.~~

H. A criminal restitution lien is a criminal penalty for the purposes of any federal bankruptcy involving the defendant.

I. A self-service storage facility that forecloses its lien pursuant to section 33-1704 may sell personal property that is subject to a restitution lien. The proceeds from the sale, less the reasonable costs of sale, shall be paid to the restitution lienholder to satisfy the restitution lien as prescribed in section 33-1704. A person who is a good faith purchaser pursuant to section 33-1704 and who purchases personal property that is subject to a restitution lien takes the property free and clear of the rights of the restitution lienholder.

J. THE SALE OF REAL OR PERSONAL PROPERTY, INCLUDING A TITLED MOTOR VEHICLE, SUBJECT TO A RESTITUTION LIEN WITHOUT DISCLOSING THE RESTITUTION LIEN IN WRITING TO THE BUYER OF SUCH PROPERTY SHALL BE A CLASS 5 FELONY. FOR PURPOSES OF THIS SECTION, THE TERM "SALE" SHALL INCLUDE ANY GIFT, ASSIGNMENT, TRADE, OR TRANSFER OF ANY NATURE REGARDLESS OF THE AMOUNT OF CONSIDERATION RECEIVED IN RETURN.

K. THE BUYER OF ANY REAL OR PERSONAL PROPERTY, INCLUDING ANY TITLED MOTOR VEHICLE, TO WHOM THE EXISTENCE OF A RESTITUTION LIEN WAS NOT DISCLOSED, IN WRITING, BY THE SELLER THEREOF SHALL BE ENTITLED TO SEEK AND RECEIVE TREBLE DAMAGES FROM THE SELLER OF SUCH ITEMS.