Senate Engrossed House Bill

FILED
KEN BENNETT
SECRETARY OF STATE

State of Arizona
House of Representatives
Fifty-first Legislature
First Regular Session
2013

CHAPTER 19

HOUSE BILL 2311

AN ACT

AMENDING SECTIONS 13-804 AND 13-806, ARIZONA REVISED STATUTES; AMENDING TITLE 28, CHAPTER 7, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTION 28-2137; RELATING TO RESTITUTION LIENS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 13-804, Arizona Revised Statutes, is amended to read:

13-804. Restitution for offense causing economic loss; fine for reimbursement of public monies

A. ~~Upon~~ ON a defendant's conviction for an offense causing economic loss to any person, the court, in its sole discretion, may order that all or any portion of the fine imposed be allocated as restitution to be paid by the defendant to any person who suffered an economic loss caused by the defendant's conduct.

B. In ordering restitution for economic loss pursuant to section 13-603, subsection C or subsection A of this section, the court shall consider all losses caused by the criminal offense or offenses for which the defendant has been convicted.

C. The court shall not consider the economic circumstances of the defendant in determining the amount of restitution.

D. Restitution payments that are ordered pursuant to section 13-603 and this section shall not be stayed if the defendant files a notice of appeal, and the payments may be held by the court pending the outcome of an appeal.

E. After the court determines the amount of restitution, the court or a staff member designated by the court, including a probation officer, shall specify the manner in which the restitution is to be paid. In deciding the manner in which the restitution is to be paid, the court or a staff member designated by the court, including a probation officer, shall make reasonable efforts to contact any victim who has requested notice pursuant to sections 13-4415 and 13-4417, shall take into account the views of the victim and shall consider the economic circumstances of the defendant. In considering the economic circumstances of the defendant, the court shall consider all of the defendant's assets and income, including workers' compensation and social security benefits. The court shall make all reasonable efforts to ensure that all persons entitled to restitution pursuant to a court order promptly receive full restitution. The court may enter any reasonable order necessary to accomplish this. If a victim has received reimbursement for the victim's economic loss from an insurance company, a crime victim compensation program funded pursuant to section 41-2407 or any other entity, the court shall order the defendant to pay the restitution to that entity. If a victim has received only partial reimbursement for the victim's economic loss, the court shall order the defendant to pay restitution first to the victim and then to the entity that partially reimbursed the victim. If a probation, parole or community supervision officer has reason to believe that court ordered restitution is not being made, the officer shall report to the court supervising the probationer or the board of executive clemency that the defendant has failed to make restitution in a timely manner and the court or

the board of executive clemency may revoke the defendant's probation, parole or community supervision.

F. If more than one defendant is convicted of the offense ~~which~~ THAT caused the loss, the defendants are jointly and severally liable for the restitution.

G. If the court does not have sufficient evidence to support a finding of the amount of restitution or the manner in which the restitution should be paid, it may conduct a hearing ~~upon~~ ON the issue according to procedures established by COURT rule ~~of court~~. The court may call the defendant to testify and to produce information or evidence. The state does not represent persons who have suffered economic loss at the hearing but may present evidence or information relevant to the issue of restitution.

H. After making the determinations in subsection B of this section the trial court shall enter a restitution order for each defendant ~~which~~ THAT sets forth all of the following:

1. The total amount of restitution the defendant owes all persons.

2. The total amount of restitution owed to each person.

3. The manner in which the restitution is to be paid.

I. The restitution order under subsection H of this section may be supported by evidence or information introduced or submitted to the court before sentencing or any evidence previously heard by the judge during the proceedings.

J. A restitution lien shall be created in favor of the state for the total amount of the restitution~~, fine, surcharges, assessments, costs, incarceration costs and fees ordered, if any~~.

K. A RESTITUTION LIEN SHALL BE CREATED IN FAVOR OF THE STATE FOR THE TOTAL AMOUNT OF THE FINE, SURCHARGES, ASSESSMENTS, COSTS, INCARCERATION COSTS AND FEES ORDERED, IF ANY, EXCEPT THAT A LIEN MAY NOT BE PERFECTED AGAINST A TITLED MOTOR VEHICLE.

~~K.~~ L. Notwithstanding any other law, a restitution lien is created in favor of a victim of the defendant ordered to make restitution. Monies received monthly from the defendant shall be applied first to satisfy the restitution order entered by the court and the payment of any restitution in arrears. Any monies that are owed by this state to a person who is under a restitution order shall be assigned first to discharge the restitution order, including any tax refund that is owed to the defendant.

~~L.~~ M. If the defendant, the state or persons entitled to restitution pursuant to a court order disagree with the manner of payment established in subsection E of this section, the defendant, court or person entitled to restitution may petition the court at any time to change the manner in which the restitution is paid. Before modifying the order pertaining to the manner in which the restitution is paid, the court shall give notice and an opportunity to be heard to the defendant, the state and, ~~upon~~ ON request, persons entitled to restitution pursuant to a court order.

Sec. 2. Section 13-806, Arizona Revised Statutes, is amended to read:

13-806. Restitution lien

A. The state or any person entitled to restitution pursuant to a court order may file in accordance with this section a restitution lien. 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 perfected against interests in personal property by filing the lien with the secretary of state, except that in the case of titled motor vehicles it shall be filed with the department of transportation motor vehicle division. A restitution lien is perfected against interests in real property by filing the lien with the county recorder of the county in which the real property is located. The state or a victim may give the additional notice of the lien as either deems appropriate.

E. The filing of a restitution lien in accordance with this section creates a lien in favor of the state or the victim in all of the following:

1. Any interest of the defendant in real property situated in the county in which the lien is filed 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 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.

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, EXCEPT THAT A LIEN MAY NOT BE PERFECTED AGAINST A TITLED MOTOR VEHICLE.

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

J. 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.

Sec. 3. Title 28, chapter 7, article 4, Arizona Revised Statutes, is amended by adding section 28-2137, to read:

28-2137. <u>Restitution lien; removal</u>

A. NOTWITHSTANDING SECTION 28-2132, AFTER A HEARING, THE DIRECTOR MAY REMOVE A RESTITUTION LIEN FILED PURSUANT TO SECTION 13-805 OR SECTION 13-806 FROM A VEHICLE RECORD IF THE DIRECTOR FINDS BOTH OF THE FOLLOWING:

1. A PERSON PURCHASED THE VEHICLE WITHOUT ANY KNOWLEDGE THAT THE VEHICLE WAS SUBJECT TO A FILED RESTITUTION LIEN.

2. THE PERSON WHO SOLD THE VEHICLE IS AN OBLIGOR UNDER A FILED RESTITUTION LIEN AND SOLD THE VEHICLE WITHOUT DISCLOSING TO THE PURCHASER THAT THE VEHICLE WAS SUBJECT TO A FILED RESTITUTION LIEN.

B. IF A RESTITUTION LIEN IS REMOVED AS PRESCRIBED IN SUBSECTION A OF THIS SECTION, THE DEPARTMENT SHALL PLACE A CODE ON THE OBLIGOR'S RECORD THAT AUTOMATICALLY RESTORES THE RESTITUTION LIEN ON ANY VEHICLE THAT IS SUBSEQUENTLY TITLED OR REGISTERED, OR BOTH, BY THE OBLIGOR.

C. IF THE LIEN, OR ANY PORTION OF THE LIEN, WAS THE RESULT OF AN ORDER TO PAY RESTITUTION, THE PARTY FOR WHOM RESTITUTION WAS ORDERED SHALL BE PROVIDED WITH NOTICE OF ANY HEARING HELD PURSUANT TO THIS SECTION AND AN OPPORTUNITY TO APPEAR. THE DEPARTMENT SHALL PROVIDE NOTICE OF THE HEARING TO THE GOVERNMENTAL AGENCY THAT REQUESTED THE LIEN BE PLACED ON THE OBLIGOR'S RECORD. THE GOVERNMENTAL AGENCY THAT REQUESTED THE LIEN SHALL PROMPTLY PROVIDE NOTICE TO ANY PARTY FOR WHOM RESTITUTION WAS ORDERED.

APPROVED BY THE GOVERNOR MARCH 28, 2013.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 28, 2013.

Passed the House February 28, 2013

by the following vote: 56 Ayes,

0 Nays, 4 Not Voting

Speaker of the House

Chief Clerk of the House

Passed the Senate March 21, 2013

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

_____ day of _____, 20_____

at _____ o'clock _____M.

_____
Secretary to the Governor

Approved this _____day of

_____

at _____o'clock _____M.

_____
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this _____ day of _____, 20_____

at _____ o'clock _____M.

_____
Secretary of State

H.B. 2311

HOUSE CONCURS IN SENATE AMENDMENTS AND FINAL PASSAGE

March 26, 2013,

by the following vote: 58 Ayes,

0 Nays, 2 Not Voting

Lela M. Toth
Speaker of the House

Cheryl Laube
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

26 day of March, 2013,

at 3:30 o'clock P M.

Mikhaila Howard
Secretary to the Governor

Approved this 28th day of

March, 2013,

at 2:38 o'clock P. M.

Janice K. Brewer
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 28th day of March, 2013,

at 5:07 o'clock P M.

Ken Bennett
Secretary of State

H.B. 2311