



93RD GENERAL ASSEMBLY
State of Illinois
2003 and 2004
HB4453

Introduced 02/03/04, by Chapin Rose

SYNOPSIS AS INTRODUCED:

625 ILCS 5/16-105.1 new

Amends the Illinois Vehicle Code. Provides that a court shall order restitution to persons who suffered personal injury or property damage as a result of misdemeanors and felonies committed in violation of the Code. States the terms that apply to restitution under the Code.

LRB093 14760 DRH 40309 b

1 AN ACT concerning vehicles.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Vehicle Code is amended by adding
5 Section 16-105.1 as follows:

6 (625 ILCS 5/16-105.1 new)

7 Sec. 16-105.1. Restitution.

8 (a) In all convictions for felonies or misdemeanors in
9 violation of this Code in which the person received any injury
10 to his or her person or damage to his or her real or personal
11 property as a result of the conduct of the defendant, the court
12 shall order restitution as provided in this Section.

13 (b) In fixing the amount of restitution to be paid, the
14 court shall assess the actual out-of-pocket expenses, losses,
15 damages, and injuries suffered by any person or persons that
16 were proximately caused by the conduct of the defendant, and
17 the amounts paid by any insurance carriers that have
18 indemnified those persons for those out-of-pocket expenses,
19 losses, damages, or injuries, provided that in no event shall
20 restitution be ordered to be paid on account of pain and
21 suffering. If a defendant fails to pay restitution in the
22 manner or within the time period specified by the court, the
23 court may enter an order directing the sheriff to seize any
24 real or personal property of a defendant to the extent
25 necessary to satisfy the order of restitution and dispose of
26 the property by public sale. All proceeds from such sale in
27 excess of the amount of restitution plus court costs and the
28 costs of the sheriff in conducting the sale shall be paid to
29 the defendant.

30 (c) In instances where a defendant has more than one charge
31 of a felony or misdemeanor in violation of this Code pending
32 against him or her in a single case, or more than one case, and

1 the defendant stands convicted of one or more charges, a plea
2 agreement negotiated by the State's Attorney and the defendant
3 may require the defendant to make restitution relating to
4 charges that have been dismissed or which it is contemplated
5 will be dismissed under the terms of the plea agreement, and
6 under the agreement, the court may impose a sentence of
7 restitution on the charge or charges of which the defendant has
8 been convicted that would require the defendant to make
9 restitution relating to other offenses as provided in the plea
10 agreement.

11 (d) The court may require the defendant to apply the
12 balance of the cash bond, after payment of court costs, and any
13 fine that may be imposed to the payment of restitution.

14 (e) Taking into consideration the ability of the defendant
15 to pay, the court shall determine whether restitution shall be
16 paid in a single payment or in installments, and shall fix a
17 period of time not in excess of 5 years, not including periods
18 of incarceration, within which payment of restitution is to be
19 paid in full. Complete restitution shall be paid in as short a
20 time period as possible. If, however, the court deems it
21 necessary and in the best interest of the person or persons who
22 have suffered loss or injury, the court may extend beyond 5
23 years the period of time within which the payment of
24 restitution is to be paid. If the defendant is ordered to pay
25 restitution and the court orders that restitution is to be paid
26 over a period greater than 6 months, the court shall order that
27 the defendant make monthly payments; the court may waive this
28 requirement of monthly payments only if there is a specific
29 finding of good cause for waiver.

30 (f) The judge may enter an order of withholding to collect
31 the amount of restitution owed in accordance with Part 8 of
32 Article XII of the Code of Civil Procedure.

33 (g) A sentence of restitution may be modified or revoked by
34 the court if the offender commits another offense, or the
35 offender fails to make restitution as ordered by the court, but
36 no sentence to make restitution shall be revoked unless the

1 court shall find that the offender has had the financial
2 ability to make restitution, and he or she has wilfully refused
3 to do so. When the offender's ability to pay restitution was
4 established at the time an order of restitution was entered or
5 modified, or when the offender's ability to pay was based on
6 the offender's willingness to make restitution as part of a
7 plea agreement made at the time the order of restitution was
8 entered or modified, there is a rebuttable presumption that the
9 facts and circumstances considered by the court at the hearing
10 at which the order of restitution was entered or modified
11 regarding the offender's ability or willingness to pay
12 restitution have not materially changed. If the court shall
13 find that the defendant has failed to make restitution and that
14 the failure is not wilful, the court may impose an additional
15 period of time within which to make restitution. The length of
16 the additional period shall not be more than 2 years. The court
17 shall retain all of the incidents of the original sentence,
18 including the authority to modify or enlarge the conditions,
19 and to revoke or further modify the sentence if the conditions
20 of payment are violated during the additional period.

21 (h) The procedure upon the filing of a Petition to Revoke a
22 sentence to make restitution shall be the same as the
23 procedures set forth in Section 5-6-4 of the Unified Code of
24 Corrections governing violation, modification, or revocation
25 of probation, of conditional discharge, or of supervision.

26 (i) Nothing contained in this Section shall preclude the
27 right of any party to proceed in a civil action to recover for
28 any damages incurred due to the criminal misconduct of the
29 defendant.

30 (j) Restitution ordered under this Section shall not be
31 subject to disbursement by the circuit clerk under Section 27.5
32 of the Clerks of Courts Act.

33 (k) A restitution order under this Section is a judgment
34 lien in favor of the victim that:

35 (1) Attaches to the property of the person subject to
36 the order;

1 (2) May be perfected in the same manner as provided in
2 Part 3 of Article 9 of the Uniform Commercial Code;

3 (3) May be enforced to satisfy any payment that is
4 delinquent under the restitution order by the person in
5 whose favor the order is issued or the person's assignee;
6 and

7 (4) Expires in the same manner as a judgment lien
8 created in a civil proceeding.

9 (l) When a restitution order is issued under this Section,
10 the issuing court shall send a certified copy of the order to
11 the clerk of the circuit court in the county where the charge
12 was filed. Upon receiving the order, the clerk shall enter and
13 index the order in the circuit court judgment docket.

14 (m) An order of restitution under this Section does not bar
15 a civil action for:

16 (1) Damages that the court did not require the person
17 to pay to the victim under the restitution order but arise
18 from an injury or property damages that is the basis of
19 restitution ordered by the court; and

20 (2) Other damages suffered by the person or persons who
21 suffered loss or injury.

22 (n) The restitution order is not discharged by the
23 completion of the sentence imposed for the offense.

24 (o) A restitution order under this Section is not
25 discharged by the liquidation of a person's estate by a
26 receiver. A restitution order under this Section may be
27 enforced in the same manner as judgment liens are enforced
28 under Article XII of the Code of Civil Procedure.

29 (p) The provisions of Section 2-1303 of the Code of Civil
30 Procedure, providing for interest on judgments, apply to
31 judgments for restitution entered under this Section.