



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB4228

Introduced 12/5/2005, by Rep. Dan Brady

SYNOPSIS AS INTRODUCED:

625 ILCS 5/16-105.1 new

Amends the Illinois Vehicle Code. Provides that a court may 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.

LRB094 15300 DRH 50491 b

1 AN ACT concerning transportation.

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 may 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 restitution may not
20 be ordered to be paid on account of pain and suffering. If a
21 defendant fails to pay restitution in the manner or within the
22 time period specified by the court, the court may enter an
23 order directing the sheriff to seize any real or personal
24 property of the defendant to the extent necessary to satisfy
25 the order of restitution and dispose of the property by public
26 sale. All proceeds from the sale, in excess of the amount of
27 restitution plus court costs and the costs of the sheriff in
28 conducting the sale, shall be paid to the defendant.

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

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

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

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

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

31 (g) A sentence of restitution may be modified or revoked by
32 the court if the offender commits another offense, or the
33 offender fails to make restitution as ordered by the court, but
34 a sentence to make restitution may not be revoked unless the
35 court finds that the offender (i) has had the financial ability
36 to make restitution and (ii) has wilfully refused to do so. If

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

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

24 (i) This Section does not preclude any party from
25 proceeding in a civil action to recover for any damages
26 incurred due to the criminal misconduct of the defendant.

27 (j) Restitution ordered under this Section is not subject
28 to disbursement by the circuit clerk under Section 27.5 of the
29 Clerks of Courts Act.

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

32 (1) attaches to the property of the person subject to
33 the order;

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

36 (3) may be enforced to satisfy any payment that is

1 delinquent under the restitution order by the person in
2 whose favor the order is issued or the person's assignee;
3 and

4 (4) expires in the same manner as a judgment lien
5 created in a civil proceeding.

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

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

13 (1) damages that the court did not require the person
14 to pay to the victim under the restitution order but arise
15 from personal injury or property damage that is the basis
16 of restitution ordered by the court; and

17 (2) other damages suffered by the person or persons who
18 suffered loss or injury.

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

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

26 (p) Section 2-1303 of the Code of Civil Procedure,
27 providing for interest on judgments, applies to judgments for
28 restitution entered under this Section.