

HB5680



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB5680

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 a defendant to pay restitution to persons who suffered personal injury or property damage as a result of misdemeanors and felonies committed in violation of the Code. Contains provisions regarding the amount of restitution, plea agreements, applying the balance of the cash bond to the payment of restitution, the manner of payment of restitution, sentence modification or revocation, civil actions, liens, discharge, interest, and other matters.

LRB095 16090 WGH 42108 b

A BILL FOR

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

1 property of the defendant to the extent necessary to satisfy
2 the order of restitution and dispose of the property by public
3 sale. All proceeds from the sale, in excess of the amount of
4 restitution plus court costs and the costs of the sheriff in
5 conducting the sale, shall be paid to the defendant.

6 (c) In instances where a defendant has more than one charge
7 of a felony or misdemeanor in violation of this Code pending
8 against him or her in a single case, or more than one case, and
9 the defendant stands convicted of one or more charges, a plea
10 agreement negotiated by the State's Attorney and the defendant
11 may require the defendant to make restitution relating to
12 charges that have been dismissed or are expected to be
13 dismissed under the terms of the plea agreement. Also under the
14 agreement, the court may impose a sentence of restitution on
15 the charge or charges of which the defendant has been convicted
16 that would require the defendant to make restitution relating
17 to other offenses as provided in the plea agreement.

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

21 (e) Taking into consideration the ability of the defendant
22 to pay, the court shall determine whether restitution shall be
23 paid in a single payment or in installments, and shall fix a
24 period of time not in excess of 5 years, not including periods
25 of incarceration, within which restitution is to be paid in
26 full. Complete restitution shall be paid in as short a time

1 period as possible. If, however, the court deems it necessary
2 and in the best interest of the person or persons who have
3 suffered loss or injury, the court may extend beyond 5 years
4 the period of time within which restitution is to be paid. If
5 the defendant is ordered to pay restitution and the court
6 orders that restitution is to be paid over a period greater
7 than 6 months, the court shall order that the defendant make
8 monthly payments. The court may waive the requirement of
9 monthly payments only if there is a specific finding of good
10 cause for waiver.

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

14 (g) A sentence of restitution may be modified or revoked by
15 the court if the offender commits another offense, or the
16 offender fails to make restitution as ordered by the court, but
17 a sentence to make restitution may not be revoked unless the
18 court finds that the offender (i) has had the financial ability
19 to make restitution and (ii) has wilfully refused to do so. If
20 the offender's ability to pay restitution was established at
21 the time an order of restitution was entered or modified, or if
22 the offender's ability to pay was based on the offender's
23 willingness to make restitution as part of a plea agreement
24 made at the time the order of restitution was entered or
25 modified, there is a rebuttable presumption that the facts and
26 circumstances regarding the offender's ability or willingness

1 to pay restitution have not materially changed since the date
2 of the hearing at which the court considered those facts and
3 circumstances. If the court finds that the defendant has failed
4 to make restitution and that the failure is not wilful, the
5 court may impose an additional period of time within which to
6 make restitution. The length of the additional period may not
7 be more than 2 years. The court shall retain all of the
8 incidents of the original sentence, including the authority to
9 modify or enlarge the conditions, and to revoke or further
10 modify the sentence if the conditions of payment are violated
11 during the additional period.

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

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

20 (j) Restitution ordered under this Section is not subject
21 to disbursement by the circuit clerk under Section 27.5 of the
22 Clerks of Courts Act.

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

25 (1) attaches to the property of the person subject to
26 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 personal injury or property damage that is the basis
19 of 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

1 enforced in the same manner as judgment liens are enforced
2 under Article XII of the Code of Civil Procedure.

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