

House File 2050 - Introduced

HOUSE FILE 2050

BY FISHER

A BILL FOR

1 An Act relating to restitution to insurers in criminal cases.

2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 602.8107, subsection 2, paragraph c,
2 subparagraph (1), Code 2014, is amended to read as follows:

3 (1) Pecuniary damages as defined in section 910.1,
4 subsection 3, payable to a victim other than an insurer.

5 Sec. 2. Section 602.8107, subsection 2, paragraph c, Code
6 2014, is amended by adding the following new subparagraph:

7 NEW SUBPARAGRAPH. (5) Pecuniary damages as defined in
8 section 910.1, subsection 3, payable to an insurer.

9 Sec. 3. Section 910.1, Code 2014, is amended by adding the
10 following new subsection:

11 NEW SUBSECTION. 1A. "*Insurer*" means an insurance company
12 governed by the provisions of chapter 515, 518, or 518A, or a
13 bonding company authorized by the commissioner of insurance.

14 Sec. 4. Section 910.1, subsections 3, 4, and 5, Code 2014,
15 are amended to read as follows:

16 3. "*Pecuniary damages*" means all damages ~~to the extent not~~
17 ~~paid by an insurer,~~ which a victim could recover against the
18 offender in a civil action arising out of the same facts or
19 event, except punitive damages and damages for pain, suffering,
20 mental anguish, and loss of consortium. Without limitation,
21 "*pecuniary damages*" includes damages for wrongful death and
22 expenses incurred for psychiatric or psychological services
23 or counseling or other counseling for the victim which became
24 necessary as a direct result of the criminal activity.

25 4. "*Restitution*" means payment of pecuniary damages to
26 a victim in an amount and in the manner provided by the
27 offender's plan of restitution. "*Restitution*" also includes
28 fines, penalties, and surcharges, the contribution of funds to
29 a local anticrime organization which provided assistance to law
30 enforcement in an offender's case, the payment of crime victim
31 compensation program reimbursements, payment of restitution
32 to public agencies pursuant to section 321J.2, subsection
33 13, paragraph "b", court costs including correctional fees
34 approved pursuant to section 356.7, court-appointed attorney
35 fees ordered pursuant to section 815.9, including the expense

1 of a public defender, and the performance of a public service
2 by an offender in an amount set by the court when the offender
3 cannot reasonably pay all or part of the court costs including
4 correctional fees approved pursuant to section 356.7, or
5 court-appointed attorney fees ordered pursuant to section
6 815.9, including the expense of a public defender, and payment
7 to the medical assistance program pursuant to chapter 249A
8 for expenditures paid on behalf of the victim resulting from
9 the offender's criminal activities including investigative
10 costs incurred by the Medicaid fraud control unit pursuant to
11 section 249A.50. If a victim has received compensation from
12 an insurer, the court shall order restitution to be paid to
13 the source of such payments in an amount which the source of
14 such payments could recover against the offender in a civil
15 action arising out of the same facts or events, subject to the
16 priority of payment provisions in the restitution plan under
17 section 910.2.

18 5. "*Victim*" means a person who has suffered pecuniary
19 damages as a result of the offender's criminal activities.
20 However, for purposes of this chapter, an insurer is not a
21 victim and does not have a right of subrogation except as
22 provided in the insurance policy or contract. However, the
23 insurer has the right to be included in any restitution plan.
24 The crime victim compensation program is not an insurer for
25 purposes of this chapter, and the right of subrogation provided
26 by section 915.92 does not prohibit restitution to the crime
27 victim compensation program.

28 Sec. 5. Section 910.2, Code 2014, is amended to read as
29 follows:

30 **910.2 Restitution or community service to be ordered by**
31 **sentencing court.**

32 1. In all criminal cases in which there is a plea of guilty,
33 verdict of guilty, or special verdict upon which a judgment
34 of conviction is rendered, the sentencing court shall order
35 that restitution be made by each offender to the victims of

1 the offender's criminal activities, to the clerk of court for
 2 fines, penalties, surcharges, and, to the extent that the
 3 offender is reasonably able to pay, for crime victim assistance
 4 reimbursement, restitution to public agencies pursuant to
 5 section 321J.2, subsection 13, paragraph "b", court costs
 6 including correctional fees approved pursuant to section
 7 356.7, court-appointed attorney fees ordered pursuant to
 8 section 815.9, including the expense of a public defender, when
 9 applicable, contribution to a local anticrime organization,
 10 ~~or~~ restitution to the medical assistance program pursuant
 11 to chapter 249A, or restitution to an insurer. However,
 12 victims shall be paid in full before fines, penalties, and
 13 surcharges, crime victim compensation program reimbursement,
 14 public agencies, court costs including correctional fees
 15 approved pursuant to section 356.7, court-appointed attorney
 16 fees ordered pursuant to section 815.9, including the expenses
 17 of a public defender, contributions to a local anticrime
 18 organization, ~~or~~ the medical assistance program, or an
 19 insurer are paid. In structuring a plan of restitution, the
 20 court shall provide for payments in the following order of
 21 priority: victim, fines, penalties, and surcharges, crime
 22 victim compensation program reimbursement, public agencies,
 23 court costs including correctional fees approved pursuant to
 24 section 356.7, court-appointed attorney fees ordered pursuant
 25 to section 815.9, including the expense of a public defender,
 26 contribution to a local anticrime organization, ~~and~~ the medical
 27 assistance program, and an insurer.

28 2. When the offender is not reasonably able to pay all or a
 29 part of the crime victim compensation program reimbursement,
 30 public agency restitution, court costs including correctional
 31 fees approved pursuant to section 356.7, court-appointed
 32 attorney fees ordered pursuant to section 815.9, including the
 33 expense of a public defender, contribution to a local anticrime
 34 organization, ~~or~~ medical assistance program restitution,
 35 or insurer restitution, the court may require the offender

1 in lieu of that portion of the crime victim compensation
2 program reimbursement, public agency restitution, court costs
3 including correctional fees approved pursuant to section
4 356.7, court-appointed attorney fees ordered pursuant to
5 section 815.9, including the expense of a public defender,
6 contribution to a local anticrime organization, ~~or~~ medical
7 assistance program restitution, or insurer restitution for
8 which the offender is not reasonably able to pay, to perform
9 a needed public service for a governmental agency or for a
10 private nonprofit agency which provides a service to the youth,
11 elderly, or poor of the community. When community service is
12 ordered, the court shall set a specific number of hours of
13 service to be performed by the offender which, for payment
14 of court-appointed attorney fees ordered pursuant to section
15 815.9, including the expenses of a public defender, shall be
16 approximately equivalent in value to those costs. The judicial
17 district department of correctional services shall provide for
18 the assignment of the offender to a public agency or private
19 nonprofit agency to perform the required service.

20 Sec. 6. NEW SECTION. 910.16 **Civil judgment against offender**
21 **for restitution to insurer.**

22 1. If an offender has fulfilled all conditions of probation
23 or parole, except for payment to an insurer under the plan of
24 restitution, the court shall enter a civil judgment against the
25 offender in favor of the insurer for any amount of restitution
26 remaining unpaid to the insurer under the plan of restitution,
27 prior to discharge from probation or parole. Upon entry of
28 the civil judgment by the court in favor of the insurer, the
29 portion of the restitution payable to the insurer shall be
30 considered paid in full for purposes of the criminal case.

31 2. Upon the expiration of an offender's sentence, if an
32 offender is not placed on probation or parole, the court shall
33 enter a civil judgment against the offender in favor of the
34 insurer in the same manner as subsection 1, for any amount of
35 restitution remaining unpaid to the insurer under the plan of

1 restitution. Upon the entry of the civil judgment, the portion
2 of the restitution payable to the insurer shall be considered
3 paid in full for purposes of the criminal case.

4 Sec. 7. Section 915.92, Code 2014, is amended to read as
5 follows:

6 **915.92 Right of action against perpetrator — subrogation.**

7 1. A right of legal action by the victim against a person
8 who has committed a crime is not lost as a consequence of
9 a person receiving compensation under the crime victim
10 compensation program. If a person receiving compensation
11 under the program seeks indemnification which would reduce the
12 compensation under section 915.87, subsection 1, the department
13 is subrogated to the recovery to the extent of payments by the
14 department to or on behalf of the person. The department has
15 a right of legal action against a person who has committed a
16 crime resulting in payment of compensation by the department to
17 the extent of the compensation payment. However, legal action
18 by the department does not affect the right of a person to seek
19 further relief in other legal actions.

20 2. In case of recovery, the court shall enter judgment for
21 distribution of the proceeds as follows:

22 a. A sum sufficient to repay any payments actually paid by
23 the victim compensation fund.

24 b. A sum sufficient to repay the victim for the damages
25 incurred as a result of the crime.

26 c. The balance, if any, shall be paid to the clerk of the
27 district court and distributed according to any remaining
28 balances that remain in the restitution plan.

29 Sec. 8. IMPLEMENTATION OF ACT. Section 25B.2, subsection
30 3, shall not apply to this Act.

31

EXPLANATION

32 The inclusion of this explanation does not constitute agreement with
33 the explanation's substance by the members of the general assembly.

34 This bill relates to restitution to insurers in criminal
35 cases.

1 The bill changes the definition of "pecuniary damages" in
2 regard to restitution to be paid in a criminal case to include
3 compensation paid to a victim by insurer.

4 The bill defines "insurer" for purposes of restitution in
5 a criminal case to mean an insurance company governed by the
6 provisions of Code chapter 515, 518, or 518A, or a bonding
7 company authorized by the commissioner of insurance.

8 The bill specifies that if a victim of a crime has received
9 compensation from an insurer, the court shall order restitution
10 to be paid to the source of such compensation in an amount
11 which the source of such payments could recover against the
12 offender in a civil action.

13 When structuring the priority of payments in a restitution
14 plan under Code section 910.2(1), the bill specifies that an
15 insurer be paid after the victim, governmental agencies, and
16 organizations are paid.

17 If an offender has fulfilled all of the conditions of
18 probation or parole, except for payment to an insurer under
19 the plan of restitution, or the sentence has expired and the
20 insurer remains unpaid under the plan of restitution, the bill
21 requires that the court enter a civil judgment against the
22 offender in favor of the insurer for any amount of restitution
23 remaining unpaid. Upon entry of the civil judgment under the
24 bill, the portion of the restitution payable to the insurer
25 shall be considered paid in full for purposes of the criminal
26 case but not for any future civil proceeding.

27 Under current law, damages paid by an insurer are
28 specifically excluded from the definition of "pecuniary
29 damages" and are not included in the restitution plan in a
30 criminal case.

31 The bill does not modify the right of an insurer to seek
32 reimbursement from the perpetrator of a crime through a right
33 of subrogation in the insurance policy or contract between the
34 insurer and the victim.

35 The bill may include a state mandate as defined in Code

H.F. 2050

1 section 25B.3. The bill makes inapplicable Code section 25B.2,
2 subsection 3, which would relieve a political subdivision from
3 complying with a state mandate if funding for the cost of
4 the state mandate is not provided or specified. Therefore,
5 political subdivisions are required to comply with any state
6 mandate included in the bill.