

House File 608 - Introduced

HOUSE FILE 608
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO HF 88)

A BILL FOR

1 An Act relating to a right of subrogation by an insurer in a
2 criminal case.

3 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 2013, 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 2013, 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, subsections 3, 4, and 5, Code 2013,
10 are amended to read as follows:

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

20 4. "*Restitution*" means payment of pecuniary damages to
21 a victim in an amount and in the manner provided by the
22 offender's plan of restitution. "*Restitution*" also includes
23 fines, penalties, and surcharges, the contribution of funds to
24 a local anticrime organization which provided assistance to law
25 enforcement in an offender's case, the payment of crime victim
26 compensation program reimbursements, payment of restitution
27 to public agencies pursuant to section 321J.2, subsection
28 13, paragraph "b", court costs including correctional fees
29 approved pursuant to section 356.7, court-appointed attorney
30 fees ordered pursuant to section 815.9, including the expense
31 of a public defender, and the performance of a public service
32 by an offender in an amount set by the court when the offender
33 cannot reasonably pay all or part of the court costs including
34 correctional fees approved pursuant to section 356.7, or
35 court-appointed attorney fees ordered pursuant to section

1 815.9, including the expense of a public defender, and payment
2 to the medical assistance program pursuant to chapter 249A for
3 expenditures paid on behalf of the victim resulting from the
4 offender's criminal activities including investigative costs
5 incurred by the Medicaid fraud control unit pursuant to section
6 249A.7. If a victim has received compensation from an insurer,
7 the court shall order restitution to be paid to the source of
8 such payments to the extent of such payments, subject to the
9 priority of payment provisions in the restitution plan under
10 section 910.2.

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

21 Sec. 4. Section 910.2, Code 2013, is amended to read as
22 follows:

23 **910.2 Restitution or community service to be ordered by**
24 **sentencing court.**

25 1. In all criminal cases in which there is a plea of guilty,
26 verdict of guilty, or special verdict upon which a judgment
27 of conviction is rendered, the sentencing court shall order
28 that restitution be made by each offender to the victims of
29 the offender's criminal activities, to the clerk of court for
30 fines, penalties, surcharges, and, to the extent that the
31 offender is reasonably able to pay, for crime victim assistance
32 reimbursement, restitution to public agencies pursuant to
33 section 321J.2, subsection 13, paragraph "b", court costs
34 including correctional fees approved pursuant to section
35 356.7, court-appointed attorney fees ordered pursuant to

1 section 815.9, including the expense of a public defender, when
2 applicable, contribution to a local anticrime organization,
3 ~~or~~ restitution to the medical assistance program pursuant
4 to chapter 249A, or restitution to an insurer. However,
5 victims shall be paid in full before fines, penalties, and
6 surcharges, crime victim compensation program reimbursement,
7 public agencies, court costs including correctional fees
8 approved pursuant to section 356.7, court-appointed attorney
9 fees ordered pursuant to section 815.9, including the expenses
10 of a public defender, contributions to a local anticrime
11 organization, ~~or~~ the medical assistance program, or an
12 insurer are paid. In structuring a plan of restitution, the
13 court shall provide for payments in the following order of
14 priority: victim, fines, penalties, and surcharges, crime
15 victim compensation program reimbursement, public agencies,
16 court costs including correctional fees approved pursuant to
17 section 356.7, court-appointed attorney fees ordered pursuant
18 to section 815.9, including the expense of a public defender,
19 contribution to a local anticrime organization, ~~and~~ the medical
20 assistance program, and an insurer.

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

1 which the offender is not reasonably able to pay, to perform
2 a needed public service for a governmental agency or for a
3 private nonprofit agency which provides a service to the youth,
4 elderly, or poor of the community. When community service is
5 ordered, the court shall set a specific number of hours of
6 service to be performed by the offender which, for payment
7 of court-appointed attorney fees ordered pursuant to section
8 815.9, including the expenses of a public defender, shall be
9 approximately equivalent in value to those costs. The judicial
10 district department of correctional services shall provide for
11 the assignment of the offender to a public agency or private
12 nonprofit agency to perform the required service.

13 Sec. 5. Section 915.92, Code 2013, is amended to read as
14 follows:

15 **915.92 Right of action against perpetrator — subrogation.**

16 1. A right of legal action by the victim against a person
17 who has committed a crime is not lost as a consequence of
18 a person receiving compensation under the crime victim
19 compensation program. If a person receiving compensation
20 under the program seeks indemnification which would reduce the
21 compensation under section 915.87, subsection 1, the department
22 is subrogated to the recovery to the extent of payments by the
23 department to or on behalf of the person. The department has
24 a right of legal action against a person who has committed a
25 crime resulting in payment of compensation by the department to
26 the extent of the compensation payment. However, legal action
27 by the department does not affect the right of a person to seek
28 further relief in other legal actions.

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

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

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

35 c. The balance, if any, shall be paid to the clerk of the

1 district court and distributed according to any remaining
2 balances that remain in the restitution plan.

3 Sec. 6. IMPLEMENTATION OF ACT. Section 25B.2, subsection
4 3, shall not apply to this Act.

5 EXPLANATION

6 This bill permits an insurer to be part of a plan of
7 restitution in a criminal case.

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

11 The bill specifies that if a victim of a crime has received
12 compensation from an insurer, the court shall order restitution
13 to be paid to the source of such compensation.

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

18 Under current law, damages paid by an insurer are
19 specifically excluded from the definition of "pecuniary
20 damages" and are not included in the restitution plan in a
21 criminal case.

22 The bill does not modify the right of an insurer to seek
23 reimbursement from the perpetrator of a crime through a right
24 of subrogation in the insurance policy or contract between the
25 insurer and the victim.

26 The bill may include a state mandate as defined in Code
27 section 25B.3. The bill makes inapplicable Code section 25B.2,
28 subsection 3, which would relieve a political subdivision from
29 complying with a state mandate if funding for the cost of
30 the state mandate is not provided or specified. Therefore,
31 political subdivisions are required to comply with any state
32 mandate included in the bill.