

HOUSE BILL No. 5592

February 24, 2004, Introduced by Reps. Lipsey, Condino, Adamini, Tobocman, LaSata, Bieda, Whitmer, Stewart, Gaffney and McConico and referred to the Committee on Insurance.

A bill to amend 1956 PA 218, entitled "The insurance code of 1956," by amending section 3135 (MCL 500.3135), as amended by 2002 PA 697.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3135. (1) A person remains subject to tort liability
2 for noneconomic loss caused by his or her ownership, maintenance,
3 or use of a motor vehicle only if the injured person has suffered
4 death, serious impairment of body function, or permanent serious
5 disfigurement.

6 (2) For a cause of action for damages pursuant to
7 subsection (1) filed on or after July 26, 1996, all of the
8 following apply:

9 (a) The issues of whether an injured person has suffered
10 serious impairment of body function or permanent serious

1 disfigurement are questions of law for the court if the court
2 finds either of the following:

3 (i) There is no factual dispute concerning the nature and
4 extent of the person's injuries.

5 (ii) There is a factual dispute concerning the nature and
6 extent of the person's injuries, but the dispute is not material
7 to the determination as to whether the person has suffered a
8 serious impairment of body function or permanent serious
9 disfigurement. However, for a closed-head injury, a question of
10 fact for the jury is created if a licensed allopathic or
11 osteopathic physician who regularly diagnoses or treats
12 closed-head injuries testifies under oath that there may be a
13 serious neurological injury.

14 (b) Damages shall be assessed on the basis of comparative
15 fault, except that damages shall not be assessed in favor of a
16 party who is more than 50% at fault.

17 (c) Damages shall not be assessed in favor of a party who was
18 operating his or her own vehicle at the time the injury occurred
19 and did not have in effect for that motor vehicle the security
20 required by section 3101 at the time the injury occurred.

21 (3) Notwithstanding any other provision of law, tort
22 liability arising from the ownership, maintenance, or use within
23 this state of a motor vehicle with respect to which the security
24 required by section 3101 was in effect is abolished except as
25 to:

26 (a) Intentionally caused harm to persons or property. Even
27 though a person knows that harm to persons or property is

1 substantially certain to be caused by his or her act or omission,
2 the person does not cause or suffer that harm intentionally if he
3 or she acts or refrains from acting for the purpose of averting
4 injury to any person, including himself or herself, or for the
5 purpose of averting damage to tangible property.

6 (b) Damages for noneconomic loss as provided and limited in
7 subsections (1) and (2).

8 (c) Damages for allowable expenses, work loss, and survivor's
9 loss as defined in sections 3107 to 3110 in excess of the daily,
10 monthly, and 3-year limitations contained in those sections. The
11 party liable for damages is entitled to an exemption reducing his
12 or her liability by the amount of taxes that would have been
13 payable on account of income the injured person would have
14 received if he or she had not been injured.

15 (d) Damages for economic loss by a nonresident in excess of
16 the personal protection insurance benefits provided under
17 section 3163(4). Damages under this subdivision are not
18 recoverable to the extent that benefits covering the same loss
19 are available from other sources, regardless of the nature or
20 number of benefit sources available and regardless of the nature
21 or form of the benefits.

22 (e) Damages up to \$500.00 to motor vehicles, to the extent
23 that the damages are not covered by insurance. An action for
24 damages pursuant to this subdivision shall be conducted in
25 compliance with subsection (4).

26 (4) In an action for damages pursuant to subsection (3)(e):

27 (a) Damages shall be assessed on the basis of comparative

1 fault, except that damages shall not be assessed in favor of a
2 party who is more than 50% at fault.

3 (b) Liability shall not be a component of residual liability,
4 as prescribed in section 3131, for which maintenance of security
5 is required by this act.

6 (5) Actions under subsection (3)(e) shall be commenced,
7 whenever legally possible, in the small claims division of the
8 district court or the municipal court. If the defendant or
9 plaintiff removes the action to a higher court and does not
10 prevail, the judge may assess costs.

11 (6) A decision of a court made pursuant to subsection (3)(e)
12 is not res judicata in any proceeding to determine any other
13 liability arising from the same circumstances as gave rise to the
14 action brought pursuant to subsection (3)(e).

15 (7) As used in this section, "serious impairment of body
16 function" means an objectively manifested ~~impairment of injury~~
17 **involving** an important body function that, ~~affects the~~ **in some**
18 **way and for some time, affected the injured** person's ~~general~~
19 ability to lead his or her normal life.