

HOUSE BILL No. 5988

June 9, 2004, Introduced by Reps. Julian, Garfield and Emmons and referred to the Committee on Insurance.

A bill to amend 1956 PA 218, entitled "The insurance code of 1956," by amending sections 3111, 3113, 3135, and 3163 (MCL 500.3111, 500.3113, 500.3135, and 500.3163), section 3113 as amended by 1986 PA 93 and sections 3135 and 3163 as amended by 2002 PA 697, and by adding section 3107c.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3107c. (1) Except as otherwise provided in section
2 3113, the total amount of personal protection insurance benefits
3 payable shall not exceed \$500,000.00 if the injured individual is
4 a nonresident of Michigan and, under an automobile insurance
5 policy issued under this act, is not a named insured, his or her
6 spouse, or a relative of either domiciled in the same household.
7 However, personal protection insurance benefits are not payable
8 to the nonresident of Michigan to the extent that benefits

1 covering the same loss are available from other sources,
2 regardless of the nature or number of benefit sources available
3 and regardless of the nature or form of the benefits.

4 (2) This section applies to motor vehicle accidents that
5 occur on or after April 1, 2004.

6 Sec. 3111. Personal protection insurance benefits are
7 payable for accidental bodily injury suffered in an accident
8 occurring out of this state, if the accident occurs within the
9 United States, ~~its~~ **United States** territories and possessions,
10 or ~~in~~ Canada, and the person whose injury is the basis of the
11 claim was at the time of the accident a named insured under a
12 personal protection insurance policy, his **or her** spouse, a
13 relative of either domiciled in the same household, or **a Michigan**
14 **resident who is** an occupant of a vehicle involved in the accident
15 whose owner or registrant was insured under a personal protection
16 insurance policy or has provided security approved by the
17 secretary of state under ~~subsection (4) of~~ section 3101.

18 Sec. 3113. A person is not entitled to be paid personal
19 protection insurance benefits for accidental bodily injury if at
20 the time of the accident any of the following circumstances
21 existed:

22 (a) The person was using a motor vehicle or motorcycle
23 ~~which~~ **that** he or she had taken unlawfully, unless the person
24 reasonably believed that he or she was entitled to take and use
25 the vehicle.

26 (b) The person was the owner or registrant of a motor vehicle
27 or motorcycle involved in the accident with respect to which the

1 security required by section 3101 or 3103 was not in effect.

2 (c) The person was not a resident of this state, was an
3 occupant of a motor vehicle or motorcycle not registered in this
4 state, and was not insured by an insurer which has filed a
5 certification in compliance with section 3163.

6 **(d) The person was not a resident of this state and was an**
7 **occupant of a motor vehicle or motorcycle and the accident**
8 **occurred out of this state.**

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

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

17 (a) The issues of whether an injured person has suffered
18 serious impairment of body function or permanent serious
19 disfigurement are questions of law for the court if the court
20 finds either of the following:

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

23 (ii) There is a factual dispute concerning the nature and
24 extent of the person's injuries, but the dispute is not material
25 to the determination as to whether the person has suffered a
26 serious impairment of body function or permanent serious
27 disfigurement. However, for a closed-head injury, a question of

1 fact for the jury is created if a licensed allopathic or
2 osteopathic physician who regularly diagnoses or treats
3 closed-head injuries testifies under oath that there may be a
4 serious neurological injury.

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

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

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

17 (a) Intentionally caused harm to persons or property. Even
18 though a person knows that harm to persons or property is
19 substantially certain to be caused by his or her act or omission,
20 the person does not cause or suffer that harm intentionally if he
21 or she acts or refrains from acting for the purpose of averting
22 injury to any person, including himself or herself, or for the
23 purpose of averting damage to tangible property.

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

26 (c) Damages for allowable expenses, work loss, and survivor's
27 loss as defined in sections 3107 to 3110 in excess of the daily,

1 monthly, and 3-year limitations contained in those sections. The
2 party liable for damages is entitled to an exemption reducing his
3 or her liability by the amount of taxes that would have been
4 payable on account of income the injured person would have
5 received if he or she had not been injured.

6 (d) Damages for economic loss by a nonresident in excess of
7 the personal protection insurance benefits provided under
8 ~~section~~ **sections 3107c and 3163(4)**. Damages under this
9 subdivision are not recoverable to the extent that benefits
10 covering the same loss are available from other sources,
11 regardless of the nature or number of benefit sources available
12 and regardless of the nature or form of the benefits.

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

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

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

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

24 (5) Actions under subsection (3)(e) shall be commenced,
25 whenever legally possible, in the small claims division of the
26 district court or the municipal court. If the defendant or
27 plaintiff removes the action to a higher court and does not

1 prevail, the judge may assess costs.

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

6 (7) As used in this section, "serious impairment of body
7 function" means an objectively manifested impairment of an
8 important body function that affects the person's general ability
9 to lead his or her normal life.

10 Sec. 3163. (1) An insurer authorized to transact automobile
11 liability insurance and personal and property protection
12 insurance in this state shall file and maintain a written
13 certification that any accidental bodily injury or property
14 damage occurring in this state arising from the ownership,
15 operation, maintenance, or use of a motor vehicle as a motor
16 vehicle by an out-of-state resident who is insured under its
17 automobile liability insurance policies, is subject to the
18 personal and property protection insurance system under this
19 act.

20 (2) A nonadmitted insurer may voluntarily file the
21 certification described in subsection (1).

22 (3) Except as otherwise provided in subsection (4), if a
23 certification filed under subsection (1) or (2) applies to
24 accidental bodily injury or property damage, the insurer and its
25 insureds with respect to that injury or damage have the rights
26 and immunities under this act for personal and property
27 protection insureds, and claimants have the rights and benefits

1 of personal and property protection insurance claimants,
2 including the right to receive benefits from the electing insurer
3 as if it were an insurer of personal and property protection
4 insurance applicable to the accidental bodily injury or property
5 damage.

6 (4) If an insurer of an out-of-state resident is required to
7 provide **personal protection insurance** benefits under
8 subsections (1) to (3) to ~~that~~ **any** out-of-state resident for
9 accidental bodily injury, ~~for an accident in which the~~
10 ~~out-of-state resident was not an occupant of a motor vehicle~~
11 ~~registered in this state, the insurer is only liable for the~~
12 ~~amount of ultimate loss sustained up to~~ **the total amount of**
13 **personal protection insurance benefits payable shall not exceed**
14 \$500,000.00. Benefits under this subsection are not recoverable
15 to the extent that benefits covering the same loss are available
16 from other sources, regardless of the nature or number of benefit
17 sources available and regardless of the nature or form of the
18 benefits.

19 (5) **For motor vehicle accidents that occur on or after April**
20 **1, 2004, a certification under subsection (1) or (2), whether**
21 **filed before, on, or after April 1, 2004, is limited to the**
22 **provision of personal and property protection insurance.**