

HOUSE BILL No. 5864

September 11, 2012, Introduced by Reps. Lyons and Haveman 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 for
2 noneconomic loss caused by his or her ownership, maintenance, or
3 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 subsection
7 (1) filed on or after July 26, 1996, all of the following apply:

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

1 disfigurement are questions of law for the court if the court finds
2 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 to
7 the determination as to whether the person has suffered a serious
8 impairment of body function or permanent serious disfigurement.
9 However, for a closed-head injury, a question of fact for the jury
10 is created if a licensed allopathic or osteopathic physician who
11 regularly diagnoses or treats closed-head injuries testifies under
12 oath that there may be a serious neurological injury.

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

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

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

24 (a) Intentionally caused harm to persons or property. Even
25 though a person knows that harm to persons or property is
26 substantially certain to be caused by his or her act or omission,
27 the person does not cause or suffer that harm intentionally if he

1 or she acts or refrains from acting for the purpose of averting
2 injury to any person, including himself or herself, or for the
3 purpose of averting damage to tangible property.

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

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

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

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

24 (4) In an action for damages ~~pursuant to~~ **UNDER** subsection
25 (3)(e):

26 (a) Damages shall be assessed on the basis of comparative
27 fault, except that damages shall not be assessed in favor of a

1 party who is more than 50% at fault.

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

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

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

15 (7) As used in this section, "serious impairment of body
16 function" means an objectively manifested ~~impairment of~~ **INJURY THAT**
17 **IMPAIRS OR IMPAIRED** an important body function **AND** that affects **OR**
18 **AFFECTED** the person's general ability to lead his or her normal
19 life.

20 (8) **TO ESTABLISH A SERIOUS IMPAIRMENT OF BODY FUNCTION, THE**
21 **INJURED PERSON MUST SATISFY ALL OF THE FOLLOWING:**

22 (A) **FOR AN INJURY TO BE OBJECTIVELY MANIFESTED, THERE MUST BE,**
23 **OR MUST HAVE BEEN, A MEDICALLY IDENTIFIABLE INJURY OR PHYSICAL**
24 **CONDITION CAUSED BY THE ACCIDENT THAT SUBSTANTIATES THE INJURED**
25 **PERSON'S CLAIMED IMPAIRMENT, PHYSICAL OR MENTAL COMPLAINTS, AND**
26 **SELF-IMPOSED RESTRICTIONS.**

27 (B) **THE BODY FUNCTION THAT IS OR WAS IMPAIRED MUST BE**

1 IMPORTANT TO AN AVERAGE PERSON, RATHER THAN IMPORTANT TO THE
2 INJURED PERSON.

3 (C) THE INJURY AND IMPAIRMENT MUST BE, OR MUST HAVE BEEN, OF
4 SUFFICIENT DURATION AND SEVERITY TO AFFECT THE COURSE AND
5 TRAJECTORY OF THE INJURED PERSON'S ENTIRE PREACCIDENT NORMAL LIFE.

6 (9) ALL OF THE FOLLOWING FACTORS SHALL BE CONSIDERED BY A
7 COURT UNDER SUBSECTION (2) (A) OR BY A JURY OR TRIER OF FACT IF A
8 MATERIAL FACTUAL DISPUTE EXISTS IN DETERMINING WHETHER THE INJURED
9 PERSON SUFFERED A SERIOUS IMPAIRMENT OF BODY FUNCTION. THE FACTORS
10 ARE NOT EXCLUSIVE AND NO INDIVIDUAL FACTOR IS DISPOSITIVE. THE
11 FACTORS TO BE CONSIDERED UNDER THIS SUBSECTION ARE AS FOLLOWS:

12 (A) THE NATURE AND EXTENT OF THE INJURY AND IMPAIRMENT.

13 (B) THE TYPE AND DURATION OF TREATMENT REQUIRED.

14 (C) THE DURATION OF THE INJURY AND IMPAIRMENT.

15 (D) THE EXTENT OF ANY RESIDUAL INJURY AND IMPAIRMENT.

16 (E) THE PROGNOSIS FOR EVENTUAL RECOVERY.

17 (F) THE DIFFERENCES BETWEEN THE PERSON'S LIFE BEFORE AND AFTER
18 THE ACCIDENT THAT WERE CAUSED BY THE INJURY AND IMPAIRMENT AND THE
19 SIGNIFICANCE OF ANY DIFFERENCES.

20 (G) ANY OTHER RELEVANT FACTORS.

21 Enacting section 1. This amendatory act applies to actions
22 filed on or after and actions pending in a trial or appellate court
23 on the effective date of this amendatory act.