



# HOUSE BILL No. 4226

January 30, 1995, Introduced by Reps. Voorhees, Llewellyn, Fitzgerald, Bush, London, Hill, Goschka, Sikkema, Rocca, Law, Horton, Gilmer and Green and referred to the Committee on Insurance.

A bill to amend sections 3116 and 3135 of Act No. 218 of the Public Acts of 1956, entitled as amended  
"The insurance code of 1956,"  
being sections 500.3116 and 500.3135 of the Michigan Compiled Laws.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 3116 and 3135 of Act No. 218 of the  
2 Public Acts of 1956, being sections 500.3116 and 500.3135 of the  
3 Michigan Compiled Laws, are amended to read as follows:

4 Sec. 3116. (1) A subtraction from personal protection  
5 insurance benefits shall not be made because of the value of a  
6 claim in tort based on the same accidental bodily injury.

7 (2) A subtraction from or reimbursement for personal  
8 protection insurance benefits paid or payable under this chapter  
9 shall be made only if recovery is realized upon a tort claim

1 arising from an accident occurring outside this state, a tort  
2 claim brought within this state against the owner or operator of  
3 a motor vehicle with respect to which the security required by  
4 section ~~3101 (3) and (4)~~ 3101(1) was not in effect, or a tort  
5 claim brought within this state based on intentionally caused  
6 harm to persons or property, and shall be made only to the extent  
7 that the recovery realized by the claimant is for damages for  
8 which the claimant has received or would otherwise be entitled to  
9 receive personal protection insurance benefits. A subtraction  
10 shall be made only to the extent of the recovery, exclusive of  
11 reasonable attorneys' fees and other reasonable expenses incurred  
12 in effecting the recovery. If personal protection insurance ben-  
13 efits have already been received, the claimant shall repay to the  
14 insurers out of the recovery a sum equal to the benefits  
15 received, but not more than the recovery exclusive of reasonable  
16 attorneys' fees and other reasonable expenses incurred in effect-  
17 ing the recovery. The insurer shall have a lien on the recovery  
18 to this extent. A recovery by an injured person or his or her  
19 estate for loss suffered by the person shall not be subtracted in  
20 calculating benefits due a dependent after the death and a recov-  
21 ery by a dependent for loss suffered by the dependent after the  
22 death shall not be subtracted in calculating benefits due the  
23 injured person.

24 (3) A personal protection insurer with a right of reimburse-  
25 ment under subsection ~~(1)~~ (2), if suffering loss from inability  
26 to collect reimbursement out of a payment received by a claimant  
27 upon a tort claim, is entitled to indemnity from a person who,

1 with notice of the insurer's interest, made the payment to the  
2 claimant without making the claimant and the insurer joint payees  
3 as their interests may appear or without obtaining the insurer's  
4 consent to a different method of payment.

5 (4) A subtraction or reimbursement shall not be due the  
6 claimant's insurer from that portion of any recovery to the  
7 extent that recovery is realized for noneconomic loss as provided  
8 in section 3135(1) and ~~-(2)(b)-~~ (3)(B) or for allowable expenses,  
9 work loss, and survivor's loss as ~~defined~~ PRESCRIBED in sec-  
10 tions 3107 to 3110 in excess of the amount recovered by the  
11 claimant from his or her insurer.

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

17 (2) FOR A CAUSE OF ACTION FOR DAMAGES PURSUANT TO  
18 SUBSECTION (1) FILED ON OR AFTER 120 DAYS AFTER THE EFFECTIVE  
19 DATE OF THIS SUBSECTION, ALL OF THE FOLLOWING APPLY:

20 (A) THE INJURED PERSON HAS NOT SUFFERED SERIOUS IMPAIRMENT  
21 OF BODY FUNCTION UNLESS THE PERSON HAS SUFFERED AN OBJECTIVELY  
22 MANIFESTED IMPAIRMENT OF AN IMPORTANT BODY FUNCTION THAT AFFECTS  
23 HIS OR HER GENERAL ABILITY TO LEAD HIS OR HER NORMAL LIFE. THE  
24 ISSUE OF WHETHER AN INJURED PERSON HAS SUFFERED SERIOUS IMPAIR-  
25 MENT OF BODY FUNCTION IS A QUESTION OF LAW FOR THE COURT.

1 (B) DAMAGES SHALL BE ASSESSED ON THE BASIS OF COMPARATIVE  
2 FAULT, EXCEPT THAT DAMAGES SHALL NOT BE ASSESSED IN FAVOR OF A  
3 PARTY WHO IS MORE THAN 50% AT FAULT.

4 (C) DAMAGES SHALL NOT BE ASSESSED IN FAVOR OF A PARTY WHO  
5 WAS OPERATING HIS OR HER OWN VEHICLE AT THE TIME THE INJURY  
6 OCCURRED AND DID NOT HAVE IN EFFECT FOR THE SAME MOTOR VEHICLE  
7 INVOLVED IN THE ACCIDENT THE SECURITY REQUIRED BY SECTION 3101 AT  
8 THE TIME THE INJURY OCCURRED.

9 (3) ~~-(2)-~~ Notwithstanding any other provision of law, tort  
10 liability arising from the ownership, maintenance, or use within  
11 this state of a motor vehicle with respect to which the security  
12 required by section ~~3101(3) and (4)~~ 3101 was in effect is abol-  
13 ished except as to:

14 (a) Intentionally caused harm to persons or property. Even  
15 though a person knows that harm to persons or property is sub-  
16 stantially certain to be caused by his or her act or omission,  
17 the person does not cause or suffer ~~such~~ THAT harm intention-  
18 ally if he or she acts or refrains from acting for the purpose of  
19 averting injury to any person, including himself or herself, or  
20 for the purpose of averting damage to tangible property.

21 (b) Damages for noneconomic loss as provided and limited in  
22 ~~subsection (1)~~ SUBSECTIONS (1) AND (2).

23 (c) Damages for allowable expenses, work loss, and  
24 survivor's loss as defined in sections 3107 to 3110 in excess of  
25 the daily, monthly, and 3-year limitations contained in those  
26 sections. The party liable for damages is entitled to an  
27 exemption reducing his or her liability by the amount of taxes

1 that would have been payable on account of income the injured  
2 person would have received if he or she had not been injured.

3 (d) Damages up to ~~-\$400.00-~~ \$500.00 to motor vehicles, to  
4 the extent that the damages are not covered by insurance. An  
5 action for damages pursuant to this subdivision shall be con-  
6 ducted in compliance with subsection ~~-(3)-~~ (4).

7 (4) ~~-(3)-~~ In an action for damages pursuant to subsection  
8 ~~-(2)(d)-~~ (3)(D):

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

12 (b) Liability shall not be a component of residual liabili-  
13 ty, as prescribed in section 3131, for which maintenance of  
14 security is required by this act.

15 (5) ~~-(4)-~~ Actions under subsection ~~-(2)(d)-~~ (3)(D) shall be  
16 commenced, whenever legally possible, in the small claims divi-  
17 sion of the district court or ~~the conciliation division of the~~  
18 ~~common pleas court of the city of Detroit or the municipal~~  
19 court. If the defendant or plaintiff removes ~~such an~~ THE  
20 action to a higher court and does not prevail, the judge may  
21 assess costs.

22 (6) ~~-(5)-~~ A decision of a court made pursuant to subsection  
23 ~~-(2)(d), shall not be~~ (3)(D) IS NOT res judicata in any proceed-  
24 ing to determine any other liability arising from the same cir-  
25 cumstances as gave rise to the action brought pursuant to subsec-  
26 tion ~~-(2)(d)-~~ (3)(D).

1       ~~(6) Subsections (2)(d), (3), (4), and (5) shall take effect~~  
2 ~~July 1, 1980.~~

3       (7) IN AN ACTION FOR DAMAGES PURSUANT TO SUBSECTION (1) OR  
4 (3)(A) FILED ON OR AFTER 120 DAYS AFTER THE EFFECTIVE DATE OF  
5 THIS SUBSECTION, ALL OF THE FOLLOWING APPLY:

6       (A) THE COURT PRESIDING OVER THE ACTION SHALL, AFTER A JURY  
7 VERDICT, DO 1 OF THE FOLLOWING WITHIN 21 DAYS AFTER ENTRY OF THE  
8 JUDGMENT:

9       (i) CONCUR IN THE AWARD.

10       (ii) ON ITS OWN MOTION OR ON THE MOTION OF ANY PARTY, REVIEW  
11 THE EXCESSIVENESS OR INADEQUACY OF THE AMOUNT AWARDED AND DETER-  
12 MINE THE APPROPRIATE AMOUNT.

13       (B) IN DETERMINING THE EXCESSIVENESS OR INADEQUACY OF THE  
14 AMOUNT AWARDED UNDER SUBDIVISION (A)(ii), THE COURT SHALL CON-  
15 sider ALL OF THE FOLLOWING FACTORS:

16       (i) THE EVIDENCE PRESENTED AT TRIAL.

17       (ii) WHETHER THE AMOUNT AWARDED WAS WITHIN THE LIMITS OF  
18 WHAT REASONABLE MINDS WOULD CONSIDER JUST COMPENSATION FOR THE  
19 INJURY AND DAMAGES SUSTAINED.

20       (iii) WHETHER THE AMOUNT AWARDED IS COMPARABLE TO AWARDS IN  
21 SIMILAR CASES WITHIN THE STATE AND IN OTHER JURISDICTIONS.

22       (iv) WHETHER THE AMOUNT AWARDED WAS THE RESULT OF IMPROPER  
23 METHODS, PREJUDICE, PASSION, PARTIALITY, SYMPATHY, CORRUPTION, OR  
24 MISTAKE OF LAW OR FACT.

25       (C) IF THE COURT FINDS THAT THE ONLY ERROR IN THE TRIAL IS  
26 THE INADEQUACY OR EXCESSIVENESS OF THE AMOUNT AWARDED, THE COURT  
27 MAY GRANT A NEW TRIAL ON THE ISSUE OF THE AMOUNT OF DAMAGES ONLY

1 UNLESS, WITHIN 14 DAYS, THE PARTIES CONSENT IN WRITING TO THE  
2 ENTRY OF A JUDGMENT IN AN AMOUNT DETERMINED BY THE COURT.