



HOUSE BILL No. 4341

February 8, 1995, Introduced by Reps. Voorhees, Bush, Llewellyn, Fitzgerald, Goschka, Law, Green, Hill, Rhead, London, Johnson, Byl, Bullard, Whyman, Galloway, Griffin, Walberg, Dolan, Gustafson and Jaye and referred to the Committee on Insurance.

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 3135 of Act No. 218 of the Public Acts
2 of 1956, being section 500.3135 of the Michigan Compiled Laws, is
3 amended to read as follows:

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

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

4 (A) THE ISSUES OF WHETHER AN INJURED PERSON HAS SUFFERED
5 SERIOUS IMPAIRMENT OF BODY FUNCTION OR PERMANENT SERIOUS DISFIG-
6 UREMENT ARE QUESTIONS OF LAW FOR THE COURT.

7 (B) DAMAGES SHALL BE ASSESSED ON THE BASIS OF COMPARATIVE
8 FAULT, EXCEPT THAT DAMAGES SHALL NOT BE ASSESSED IN FAVOR OF A
9 PARTY WHO IS 50% OR MORE AT FAULT.

10 (C) DAMAGES SHALL NOT BE ASSESSED IN FAVOR OF A PARTY WHO
11 WAS OPERATING HIS OR HER OWN VEHICLE AT THE TIME THE INJURY
12 OCCURRED AND DID NOT HAVE IN EFFECT FOR THAT MOTOR VEHICLE THE
13 SECURITY REQUIRED BY SECTION 3101 AT THE TIME THE INJURY
14 OCCURRED.

15 (3) ~~(2)~~ Notwithstanding any other provision of law, tort
16 liability arising from the ownership, maintenance, or use within
17 this state of a motor vehicle with respect to which the security
18 required by section ~~3101(3) and (4)~~ 3101 was in effect is abol-
19 ished except as to:

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

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

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

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

14 (4) ~~(3)~~ In an action for damages pursuant to subsection
 15 ~~(2)(d)~~ (3)(D):

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

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

22 (5) ~~(4)~~ Actions under subsection ~~(2)(d)~~ (3)(D) shall be
 23 commenced, whenever legally possible, in the small claims divi-
 24 sion of the district court or ~~the conciliation division of the~~
 25 ~~common pleas court of the city of Detroit or~~ the municipal
 26 court. If the defendant or plaintiff removes ~~such an~~ THE

1 action to a higher court and does not prevail, the judge may
2 assess costs.

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

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

10 (7) AS USED IN THIS SECTION, "SERIOUS IMPAIRMENT OF BODY
11 FUNCTION" MEANS AN OBJECTIVELY MANIFESTED IMPAIRMENT OF AN IMPOR-
12 TANT BODY FUNCTION THAT AFFECTS THE PERSON'S GENERAL ABILITY TO
13 LEAD HIS OR HER NORMAL LIFE.