

SENATE BILL NO. 743

September 28, 1999, Introduced by Senators CHERRY, YOUNG and VAUGHN and referred to the Committee on Financial Services.

A bill to amend 1956 PA 218, entitled "The insurance code of 1956," by amending section 3135 (MCL 500.3135), as amended by 1995 PA 222.

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 ~~120 days after the effective~~
8 ~~date of this subsection~~ JULY 26, 1996, all of the following
9 apply:

1 (a) The issues of whether an injured person has suffered
2 serious impairment of body function or permanent serious
3 disfigurement are questions of law for the court if the court
4 finds either of the following:

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

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

16 (b) 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% at fault.

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

24 (3) Notwithstanding any other provision of law, tort liabil-
25 ity arising from the ownership, maintenance, or use within this
26 state of a motor vehicle with respect to which the security

1 required by section 3101 was in effect is abolished except as
2 to:

3 (a) Intentionally caused harm to persons or property. Even
4 though a person knows that harm to persons or property is sub-
5 stantially certain to be caused by his or her act or omission,
6 the person does not cause or suffer that harm intentionally if he
7 or she acts or refrains from acting for the purpose of averting
8 injury to any person, including himself or herself, or for the
9 purpose of averting damage to tangible property.

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

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

19 (d) Damages up to \$500.00 to motor vehicles AND DAMAGES UP
20 TO \$500.00 TO OBJECTS IN TOW, to the extent that the damages are
21 not covered by insurance. An action for damages pursuant to this
22 subdivision shall be conducted in compliance with subsection
23 (4).

24 (4) In an action for damages pursuant to subsection (3)(d):

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

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

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

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

13 (7) As used in this section, "serious impairment of body
14 function" means an objectively manifested impairment of an impor-
15 tant body function that affects the person's general ability to
16 lead his or her normal life.