

**SUBSTITUTE FOR
SENATE BILL NO. 1164**

(As amended by the Senate, November 12, 2002)

A bill to amend 1956 PA 218, entitled
"The insurance code of 1956,"
by amending sections 3135 and 3163 (500.3135 and 500.3163),
section 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:

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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

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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 FOR ECONOMIC LOSS BY A NONRESIDENT IN EXCESS OF
20 THE PERSONAL PROTECTION INSURANCE BENEFITS PROVIDED UNDER
21 SECTION 3163(4). DAMAGES UNDER THIS SUBDIVISION ARE NOT RECOVER-
22 ABLE TO THE EXTENT THAT BENEFITS COVERING THE SAME LOSS ARE
23 AVAILABLE FROM OTHER SOURCES, REGARDLESS OF THE NATURE OR NUMBER
24 OF BENEFIT SOURCES AVAILABLE AND REGARDLESS OF THE NATURE OR FORM
25 OF THE BENEFITS.

26 (E) ~~-(d)-~~ Damages up to \$500.00 to motor vehicles, to the
27 extent that the damages are not covered by insurance. An action

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1 for damages pursuant to this subdivision shall be conducted in
2 compliance with subsection (4).

3 (4) In an action for damages pursuant to subsection ~~-(3)(d)-~~
4 (3)(E):

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

11 (5) Actions under subsection ~~-(3)(d)-~~ (3)(E) shall be com-
12 menced, whenever legally possible, in the small claims division
13 of the district court or the municipal court. If the defendant
14 or plaintiff removes the action to a higher court and does not
15 prevail, the judge may assess costs.

16 (6) A decision of a court made pursuant to
17 subsection ~~-(3)(d)-~~ (3)(E) is not res judicata in any proceeding
18 to determine any other liability arising from the same circum-
19 stances as gave rise to the action brought pursuant to
20 subsection ~~-(3)(d)-~~ (3)(E).

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

25 Sec. 3163. (1) An insurer authorized to transact automobile
26 liability insurance and personal and property protection
27 insurance in this state shall file and maintain a written

1 certification that any accidental bodily injury or property
2 damage occurring in this state arising from the ownership, opera-
3 tion, maintenance, or use of a motor vehicle as a motor vehicle
4 by an out-of-state resident who is insured under its automobile
5 liability insurance policies, ~~shall be~~ IS subject to the per-
6 sonal and property protection insurance system ~~set forth in~~
7 UNDER this act.

8 (2) A nonadmitted insurer may voluntarily file the certifi-
9 cation described in subsection (1).

10 (3) ~~When~~ EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (4),
11 IF a certification filed under ~~subsections~~ SUBSECTION (1) or
12 (2) applies to accidental bodily injury or property damage, the
13 insurer and its insureds with respect to that injury or damage
14 have the rights and immunities under this act for personal and
15 property protection insureds, and claimants have the rights and
16 benefits of personal and property protection insurance claimants,
17 including the right to receive benefits from the electing insurer
18 as if it were an insurer of personal and property protection
19 insurance applicable to the accidental bodily injury or property
20 damage.

21 (4) IF AN INSURER OF AN OUT-OF-STATE RESIDENT IS REQUIRED TO PROVIDE
22 BENEFITS UNDER SUBSECTIONS (1) TO (3) TO THAT OUT-OF-STATE RESIDENT FOR
23 ACCIDENTAL BODILY INJURY FOR AN ACCIDENT IN WHICH THE OUT-OF-STATE
RESIDENT WAS NOT AN OCCUPANT OF A MOTOR VEHICLE REGISTERED IN THIS STATE,
THE INSURER IS ONLY LIABLE FOR THE AMOUNT THAT AN
24 INSURER THAT IS A MEMBER OF THE MICHIGAN CATASTROPHIC CLAIMS
25 ASSOCIATION UNDER SECTION 3104 WOULD NOT BE INDEMNIFIED FOR UNDER
26 SECTION 3104(2). BENEFITS UNDER THIS SUBSECTION ARE NOT
27 RECOVERABLE TO THE EXTENT THAT BENEFITS COVERING THE SAME LOSS

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1 ARE AVAILABLE FROM OTHER SOURCES, REGARDLESS OF THE NATURE OR
2 NUMBER OF BENEFIT SOURCES AVAILABLE AND REGARDLESS OF THE NATURE
3 OR FORM OF THE BENEFITS.

4 Enacting section 1. This amendatory act applies to motor
5 vehicle accidents that occur on or after January 1, 2003.