

HOUSE BILL No. 4846

May 31, 2005, Introduced by Reps. Condino, Lipsey, Alma Smith, Bieda, Gleason, Kolb, Donigan, Miller, Plakas, Vagnozzi, Cushingberry, Gonzales, Meisner and Anderson and referred to the Committee on Insurance.

A bill to amend 1956 PA 218, entitled
"The insurance code of 1956,"
by amending sections 3009, 3103, 3116, 3135, and 3177 (MCL
500.3009, 500.3103, 500.3116, 500.3135, and 500.3177), section 3009
as amended by 1988 PA 43, section 3103 as amended by 1986 PA 173,
section 3135 as amended by 2002 PA 697, and section 3177 as amended
by 1984 PA 426.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3009. (1) An automobile liability or motor vehicle
2 liability policy insuring against loss resulting from liability
3 imposed by law for property damage, bodily injury, or death
4 suffered by any person arising out of the ownership, **OPERATION**,
5 maintenance, or use of a motor vehicle shall not be delivered or
6 issued for delivery in this state with respect to any motor vehicle
7 registered or principally garaged in this state unless the

1 liability coverage is subject to a limit, exclusive of interest and
2 costs, of not less than \$20,000.00 because of bodily injury to or
3 death of 1 person in any 1 accident, and subject to that limit for
4 1 person, to a limit of not less than \$40,000.00 because of bodily
5 injury to or death of 2 or more persons in any 1 accident, and to a
6 limit of not less than \$10,000.00 because of injury to or
7 destruction of property of others in any accident.

8 (2) If authorized by the insured, automobile liability or
9 motor vehicle liability coverage may be excluded when a vehicle is
10 operated by a named person. ~~Such~~ **THIS** exclusion ~~shall~~ **IS** not be
11 valid unless the following notice is on the face of the policy or
12 the declaration page or certificate of the policy and on the
13 certificate of insurance:

14 "Warning-when a named excluded person operates a vehicle all
15 liability coverage is void-no one is insured. Owners of the vehicle
16 and others legally responsible for the acts of the named excluded
17 person remain fully personally liable."

18 (3) If an insurer deletes coverages from an automobile
19 insurance policy pursuant to section 3101, the insurer shall send
20 documentary evidence of the deletion to the insured.

21 Sec. 3103. (1) An owner or registrant of a motorcycle shall
22 provide security against loss resulting from liability imposed by
23 law for property damage, bodily injury, or death suffered by a
24 person arising out of the ownership, **OPERATION**, maintenance, or use
25 of that motorcycle. The security shall conform with the
26 requirements of section 3009(1).

27 (2) Each insurer transacting insurance in this state ~~which~~

1 **THAT** affords coverage for a motorcycle as described in subsection
2 (1) also shall offer, to an owner or registrant of a motorcycle,
3 security for the payment of first-party medical benefits only, in
4 increments of \$5,000.00, payable in the event the owner or
5 registrant is involved in a motorcycle accident. An insurer
6 providing first-party medical benefits may offer, at appropriate
7 premium rates, deductibles, provisions for the coordination of
8 these benefits, and provisions for the subtraction of other
9 benefits provided or required to be provided under the laws of any
10 state or the federal government, subject to the prior approval of
11 the commissioner. These deductibles and provisions shall apply only
12 to benefits payable to the person named in the policy, the spouse
13 of the insured, and any relative of either domiciled in the same
14 household.

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

18 (2) A subtraction from or reimbursement for personal
19 protection insurance benefits paid or payable under this chapter
20 shall be made only if recovery is realized upon a tort claim
21 arising from an accident occurring outside this state, a tort claim
22 brought within this state against the owner or operator of a motor
23 vehicle with respect to which the security required by section 3101
24 ~~(3) and (4)~~ was not in effect, or a tort claim brought within this
25 state based on intentionally caused harm to persons or property,
26 and shall be made only to the extent that the recovery realized by
27 the claimant is for damages for which the claimant has received or

1 would otherwise be entitled to receive personal protection
2 insurance benefits. A subtraction shall be made only to the extent
3 of the recovery, exclusive of reasonable attorneys' fees and other
4 reasonable expenses incurred in effecting the recovery. If personal
5 protection insurance benefits have already been received, the
6 claimant shall repay to the insurers out of the recovery a sum
7 equal to the benefits received, but not more than the recovery
8 exclusive of reasonable attorneys' fees and other reasonable
9 expenses incurred in effecting the recovery. The insurer shall have
10 a lien on the recovery to this extent. A recovery by an injured
11 person or his or her estate for loss suffered by the person shall
12 not be subtracted in calculating benefits due a dependent after the
13 death and a recovery by a dependent for loss suffered by the
14 dependent after the death shall not be subtracted in calculating
15 benefits due the injured person.

16 (3) A personal protection insurer with a right of
17 reimbursement under subsection (1), if suffering loss from
18 inability to collect reimbursement out of a payment received by a
19 claimant upon a tort claim is entitled to indemnity from a person
20 who, with notice of the insurer's interest, made the payment to the
21 claimant without making the claimant and the insurer joint payees
22 as their interests may appear or without obtaining the insurer's
23 consent to a different method of payment.

24 (4) A subtraction or reimbursement shall not be due the
25 claimant's insurer from that portion of any recovery to the extent
26 that recovery is realized for noneconomic loss as provided in
27 section 3135(1) and ~~-(2)(b)-~~ **(3)(B)** or for allowable expenses, work

1 loss, and survivor's loss as defined in sections 3107 to 3110 in
2 excess of the amount recovered by the claimant from his or her
3 insurer.

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

9 (2) For a cause of action for damages pursuant to subsection
10 (1):

11 **(A) IF THE CAUSE OF ACTION FOR DAMAGES WAS** filed on or after
12 July 26, 1996 **BUT BEFORE JULY 1, 2005**, all of the following apply:

13 **(i) ~~-(a)-~~** The issues of whether an injured person has suffered
14 serious impairment of body function or permanent serious
15 disfigurement are questions of law for the court if the court finds
16 either of the following:

17 **(A) ~~-(i)-~~** There is no factual dispute concerning the nature and
18 extent of the person's injuries.

19 **(B) ~~-(ii)-~~** There is a factual dispute concerning the nature and
20 extent of the person's injuries, but the dispute is not material to
21 the determination as to whether the person has suffered a serious
22 impairment of body function or permanent serious disfigurement.
23 However, for a closed-head injury, a question of fact for the jury
24 is created if a licensed allopathic or osteopathic physician who
25 regularly diagnoses or treats closed-head injuries testifies under
26 oath that there may be a serious neurological injury.

27 **(ii) ~~-(b)-~~** Damages shall be assessed on the basis of

1 comparative fault, except that damages shall not be assessed in
2 favor of a party who is more than 50% at fault.

3 (iii) ~~-(e)-~~ Damages shall not be assessed in favor of a party
4 who was operating his or her own vehicle at the time the injury
5 occurred and did not have in effect for that motor vehicle the
6 security required by section 3101 at the time the injury occurred.

7 (B) IF THE CAUSE OF ACTION FOR DAMAGES WAS FILED ON OR AFTER
8 JULY 1, 2005, ALL OF THE FOLLOWING APPLY:

9 (i) THE ISSUES OF WHETHER AN INJURED PERSON HAS SUFFERED
10 SERIOUS IMPAIRMENT OF BODY FUNCTION OR PERMANENT SERIOUS
11 DISFIGUREMENT ARE QUESTIONS OF FACT UNLESS THERE IS NO GENUINE
12 ISSUE AS TO ANY MATERIAL FACT CONCERNING THE NATURE, EXTENT, AND
13 EFFECT OF THE PERSON'S INJURIES OR IMPAIRMENTS. IF THERE IS NO
14 GENUINE ISSUE AS TO ANY MATERIAL FACT CONCERNING THE NATURE,
15 EXTENT, AND EFFECT OF THE PERSON'S INJURIES OR IMPAIRMENTS, THE
16 ISSUES OF WHETHER AN INJURED PERSON HAS SUFFERED SERIOUS IMPAIRMENT
17 OF BODY FUNCTION OR PERMANENT SERIOUS DISFIGUREMENT ARE QUESTIONS
18 OF LAW FOR THE COURT.

19 (ii) NONECONOMIC DAMAGES SHALL BE ASSESSED ON THE BASIS OF
20 COMPARATIVE FAULT, EXCEPT THAT NONECONOMIC DAMAGES SHALL NOT BE
21 ASSESSED IN FAVOR OF A PLAINTIFF WHO IS MORE THAN 50% AT FAULT OR
22 REDUCED IN FAVOR OF A DEFENDANT WHO IS MORE THAN 50% AT FAULT.

23 (iii) NONECONOMIC DAMAGES SHALL NOT BE ASSESSED IN FAVOR OF A
24 PARTY WHO WAS OPERATING A MOTOR VEHICLE TITLED OR REGISTERED IN THE
25 NAME OF THAT PARTY AT THE TIME THE INJURY OCCURRED IF THERE WAS NOT
26 IN EFFECT FOR THAT MOTOR VEHICLE THE SECURITY REQUIRED BY SECTION
27 3101 AT THE TIME THE INJURY OCCURRED.

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

(a) ~~Intentionally~~ **ALL DAMAGES ARISING OUT OF INTENTIONALLY** caused harm to persons or property **WITHOUT REGARD TO ANY TORT IMMUNITY FOR ECONOMIC OR NONECONOMIC LOSS THAT WOULD OTHERWISE BE AVAILABLE UNDER THIS ACT**. Even though a person knows that harm to persons or property is substantially certain to be caused by his or her act or omission, the person does not cause or suffer that harm intentionally if he or she acts or refrains from acting for the purpose of averting injury to any person, including himself or herself, or for the purpose of averting damage to tangible property.

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

(c) ~~Damages for allowable expenses, work loss, and survivor's loss as defined in sections 3107 to 3110 in excess of the daily, monthly, and 3-year limitations contained in those sections.~~ **ALL DAMAGES FOR ECONOMIC LOSS AND LOSS OF EARNING CAPACITY THAT ARE NOT COMPENSABLE BY SECTIONS 3107 TO 3110**. The party liable for damages is entitled to an exemption reducing his or her liability by the amount of taxes that would have been payable on account of income the injured person would have received if he or she had not been injured.

(d) Damages for economic loss by a nonresident in excess of the personal protection insurance benefits provided under section

1 3163(4). Damages under this subdivision are not recoverable to the
2 extent that benefits covering the same loss are available from
3 other sources, regardless of the nature or number of benefit
4 sources available and regardless of the nature or form of the
5 benefits.

6 (e) Damages up to \$500.00 to motor vehicles, to the extent
7 that the damages are not covered by insurance. An action for
8 damages pursuant to this subdivision shall be conducted in
9 compliance with subsection (4).

10 (4) In an action for damages pursuant to subsection (3)(e):

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

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

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

22 (6) A decision of a court made pursuant to subsection (3)(e)
23 is not res judicata in any proceeding to determine any other
24 liability arising from the same circumstances as gave rise to the
25 action brought pursuant to subsection (3)(e).

26 (7) As used in this section, "serious impairment of body
27 function" means an objectively manifested **INJURY OR** impairment ~~of~~

1 INVOLVING an important body function that affects ~~the person's~~
 2 ~~general ability to lead his or her normal life~~ OR AFFECTED THE
 3 PERSON'S LIFE IN A MANNER, AND FOR A TIME, THAT WAS NOT CLEARLY
 4 FRIVOLOUS. THE CHANGES MADE IN THIS SUBSECTION BY THE AMENDATORY
 5 ACT THAT ADDED THIS SENTENCE APPLY TO ANY CASE PENDING ON, OR FILED
 6 ON OR AFTER, JULY 22, 2004.

7 Sec. 3177. (1) An insurer obligated to pay personal protection
 8 insurance benefits for accidental bodily injury to a person arising
 9 out of the ownership, **OPERATION**, maintenance, or use of an
 10 uninsured motor vehicle as a motor vehicle may recover ~~such~~
 11 benefits paid and appropriate loss adjustment costs incurred from
 12 the owner or registrant of the uninsured motor vehicle or from his
 13 or her estate. Failure of ~~such a~~ **THE** person to make payment
 14 within 30 days after judgment is a ground for suspension or
 15 revocation of his or her motor vehicle registration and license as
 16 defined in section 25 of the Michigan vehicle code, ~~Act No. 300 of~~
 17 ~~the Public Acts of 1949, being section 257.25 of the Michigan~~
 18 ~~Compiled Laws~~ **1949 PA 300, MCL 257.25**. An uninsured motor vehicle
 19 for the purpose of this section is a motor vehicle with respect to
 20 which **THE** security ~~is~~ required by sections 3101 and 3102 is not
 21 in effect at the time of the accident.

22 (2) The motor vehicle registration and license shall not be
 23 suspended or revoked and the motor vehicle registration and license
 24 shall be restored if the debtor enters into a written agreement
 25 with the secretary of state permitting the payment of the judgment
 26 in installments, if the payment of any installments is not in
 27 default.

1 (3) The secretary of state upon receipt of a certified
2 abstract of court record of a judgment or notice from the insurer
3 of an acknowledgment of debt shall notify the owner or registrant
4 of an uninsured vehicle of the provisions of subsection (1) at that
5 person's last recorded address with the secretary of state and
6 **SHALL** inform that person of the right to enter into a written
7 agreement with the secretary of state for the payment of the
8 judgment or debt in installments.

9 Enacting section 1. The changes made in section 3135(7) of the
10 insurance code of 1956, 1956 PA 218, MCL 500.3135, by this
11 amendatory act are curative and intended to correct the
12 misinterpretation of existing law and legislative intent that
13 occurred in the Michigan supreme court decision in Kreiner v
14 Fischer and Straub v Collette and Heil-Wyllie, 471 Mich 109 (2004);
15 683 NW2d 611.