

HOUSE BILL No. 4940

June 15, 2005, Introduced by Rep. Gaffney and referred to the Committee on Insurance.

A bill to amend 1956 PA 218, entitled
"The insurance code of 1956,"
by amending section 3135 (MCL 500.3135), as amended by 2002 PA 697.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3135. (1) A person remains subject to tort liability for
2 noneconomic loss caused by his or her ownership, maintenance, or
3 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 subsection
7 (1) filed on or after July 26, 1996, all of the following apply:

8 (a) The issues of whether an injured person has suffered
9 serious impairment of body function or permanent serious
10 disfigurement are questions of law for the court if the court finds
11 either of the following:

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

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

11 (b) 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 (c) Damages shall not be assessed in favor of a party who was
15 operating his or her own vehicle at the time the injury occurred
16 and did not have in effect for that motor vehicle the security
17 required by section 3101 at the time the injury occurred.

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

22 (a) Intentionally caused harm to persons or property. Even
23 though a person knows that harm to persons or property is
24 substantially certain to be caused by his or her act or omission,
25 the person does not cause or suffer that harm intentionally if he
26 or she acts or refrains from acting for the purpose of averting
27 injury to any person, including himself or herself, or for the

1 purpose of averting damage to tangible property.

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

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

11 (d) Damages for economic loss by a nonresident in excess of
12 the personal protection insurance benefits provided under section
13 3163(4). Damages under this subdivision are not recoverable to the
14 extent that benefits covering the same loss are available from
15 other sources, regardless of the nature or number of benefit
16 sources available and regardless of the nature or form of the
17 benefits.

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

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

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

26 (b) Liability shall not be a component of residual liability,
27 as prescribed in section 3131, for which maintenance of security is

1 required by this act.

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

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

11 (7) As used in this section, "serious impairment of body
12 function" means an objectively manifested **INJURY OR** impairment ~~of~~
13 **INVOLVING** an important body function that affects ~~the person's~~
14 ~~general ability to lead his or her normal life~~ **OR AFFECTED THE**
15 **PERSON'S LIFE IN A MANNER, AND FOR A TIME, THAT WAS NOT CLEARLY**
16 **FRIVOLOUS. THE CHANGES MADE IN THIS SUBSECTION BY THE AMENDATORY**
17 **ACT THAT ADDED THIS SENTENCE APPLY TO ANY CASE PENDING ON, OR FILED**
18 **ON OR AFTER, JULY 22, 2004.**

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