

HOUSE BILL No. 4680

March 24, 2009, Introduced by Rep. Meadows and referred to the Committee on Judiciary.

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 **AN IMPORTANT** body function, or
5 permanent serious 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 **AN IMPORTANT** body function or permanent
10 serious disfigurement are questions of law for the court if ~~the~~

~~court finds either of the following:~~

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

~~—— (ii) There is a factual dispute concerning the nature and extent of the person's injuries, but the dispute is not material to the determination as to whether the person has suffered a serious impairment of body function or permanent serious disfigurement.~~

~~However, for~~ **THERE IS NO GENUINE ISSUE AS TO ANY MATERIAL FACT. IF**

THERE IS A GENUINE ISSUE AS TO ANY MATERIAL FACT, THE ISSUES OF

WHETHER AN INJURED PERSON SUFFERED SERIOUS IMPAIRMENT OF AN

IMPORTANT BODY FUNCTION OR PERMANENT SERIOUS DISFIGUREMENT ARE

QUESTIONS OF FACT FOR THE JURY. FOR a closed-head injury, a

question of fact for the jury is **ALSO** created if a licensed

allopathic or osteopathic physician who regularly diagnoses or

treats closed-head injuries testifies under oath that there may be

a serious neurological injury.

(b) Damages shall be assessed on the basis of comparative

fault, except that damages shall not be assessed in favor of a

party who is more than 50% at fault.

(c) Damages shall not be assessed in favor of a party who was

operating his or her own vehicle at the time the injury occurred

and did not have in effect for that motor vehicle the security

required by section 3101 at the time the injury occurred.

(3) Notwithstanding any other provision of law, tort liability

arising from the ownership, 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:

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

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

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

17 (d) Damages for economic loss by a nonresident in excess of
18 the personal protection insurance benefits provided under section
19 3163(4). Damages under this subdivision are not recoverable to the
20 extent that benefits covering the same loss are available from
21 other sources, regardless of the nature or number of benefit
22 sources available and regardless of the nature or form of the
23 benefits.

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

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

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

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

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

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

(7) As used in this section, "serious impairment of **AN IMPORTANT** body function" means an objectively manifested **INJURY OR** impairment ~~of an important body function~~ that affects **OR DID AFFECT** the **INJURED** person's ~~general~~ ability to ~~lead~~ **LIVE** his or her normal life. **SERIOUS IMPAIRMENT OF AN IMPORTANT BODY FUNCTION DOES NOT REQUIRE PROOF THAT THE INJURY OR IMPAIRMENT OR ITS EFFECT MET EITHER OF THE FOLLOWING:**

(A) IS OR WAS PERMANENT, SEVERE, EXTENSIVE, OR PERVASIVE OR LASTED FOR A SIGNIFICANT PERIOD OF TIME.

(B) ALTERED THE COURSE OR TRAJECTORY OF THE INJURED PERSON'S LIFE; CAUSED THE INJURED PERSON TO BE GENERALLY, OR FOR THE MOST

1 PART, UNABLE TO LIVE HIS OR HER NORMAL LIFE; CAUSED THE INJURED
2 PERSON'S LIFE TO BE SUBSTANTIALLY DIFFERENT AFTER THE INJURY THAN
3 IT WAS BEFORE; OR THAT THE BODY FUNCTION IN QUESTION IS ESSENTIAL
4 OR INDISPENSABLE TO SUSTAINING OR LIVING A NORMAL LIFE.

5 (8) THE CHANGES MADE BY THE AMENDATORY ACT THAT ADDED THIS
6 SUBSECTION APPLY TO ANY CASES PENDING IN THE TRIAL OR APPELLATE
7 COURT ON THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS
8 SUBSECTION AND TO ANY CASES FILED ON OR AFTER THE EFFECTIVE DATE OF
9 THE AMENDATORY ACT THAT ADDED THIS SUBSECTION.