

# HOUSE BILL No. 5631

December 1, 2009, Introduced by Reps. Melton, Liss, Haugh, Gregory, Slavens, Kandrevas, Segal, Switalski, Geiss, Constan, Huckleberry, Robert Jones, Durhal, Cushingberry, Womack, Lemmons, Young, Nathan, Lisa Brown, Stanley, Roberts, Gonzales and Lipton and referred to the Committee on Insurance.

A bill to amend 1956 PA 218, entitled  
"The insurance code of 1956,"  
by amending sections 3037 and 3135 (MCL 500.3037 and 500.3135),  
section 3037 as amended by 1980 PA 461 and section 3135 as amended  
by 2002 PA 697.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 3037. (1) At the time a new applicant for the insurance  
2       required by section 3101 for a private passenger nonfleet  
3       automobile makes an initial written application to the insurer, an  
4       insurer shall offer both of the following collision coverages to  
5       the applicant:

6       (a) Limited collision coverage which shall pay for collision  
7       damage to the insured vehicle without a deductible amount when the

1 operator of the vehicle is not substantially at fault in the  
2 accident from which the damage arose.

3 (b) Broad form collision coverage which shall pay for  
4 collision damage to the insured vehicle regardless of fault, with  
5 deductibles in such amounts as may be approved by the commissioner,  
6 which deductibles shall be waived if the operator of the vehicle is  
7 not substantially at fault in the accident from which the damage  
8 arose.

9 (2) In addition to the coverages offered pursuant to  
10 subsection (1), standard and limited collision coverage may be  
11 offered with deductibles as approved by the commissioner.

12 (3) Where the applicant is required by the insurer to sign the  
13 written application form described in subsection (1), if the  
14 applicant chooses to reject both of the collision coverages, or  
15 limited collision without a deductible, offered under subsection  
16 (1), the rejection shall be made in writing either on a separate  
17 form or as part of the application, or some combination thereof, as  
18 approved by the commissioner. The rejection statement shall inform  
19 the applicant of his or her rights ~~in the event of damage to~~ **IF** the  
20 insured vehicle **IS DAMAGED** under the alternative coverage option  
21 selected.

22 (4) ~~In the case of~~ **FOR** a written application made by mail, if  
23 the applicant fails to sign or return a written rejection statement  
24 as required by subsection (3), the requirements of subsection (3)  
25 ~~shall be considered to have been~~ **ARE** satisfied with respect to the  
26 insurer if all of the following occur:

27 (a) The application provides the applicant with an opportunity

1 to select the coverages required to be offered under subsection  
2 (1).

3 (b) The applicant is requested to sign the rejection  
4 statement, either as part of the application or as a separate form  
5 issued with the application, if the applicant fails to select  
6 either of the coverages specified in subsection (1).

7 (c) The applicant signed the application as otherwise required  
8 by the insurer.

9 (5) At the time of the initial written application specified  
10 in subsection (1), an agent or insurer shall provide the applicant  
11 with a written explanation of collision coverage options in easily  
12 understandable language, if that information is not contained in  
13 the application form.

14 (6) At least annually in conjunction with the renewal of a  
15 private passenger nonfleet automobile insurance policy, or at the  
16 time of an addition, deletion, or substitution of a vehicle under  
17 an existing policy, other than a group policy, an insurer shall  
18 inform the policyholder, on a form approved by the commissioner, of  
19 all of the following:

20 (a) The current status of collision coverage, if any, for the  
21 vehicle or vehicles affected by the renewal or change and the  
22 rights of the insured ~~in the event of damages to~~ **IF** the insured  
23 vehicle **IS DAMAGED** under the current coverage.

24 (b) The collision coverages available under the policy and the  
25 rights of the insured ~~in the event of damage to~~ **IF** the insured  
26 vehicle **IS DAMAGED** under each collision option.

27 (c) Procedures for the policyholder to follow if he or she

1 wishes to change the current collision coverage.

2 (7) AN INSURER THAT PAYS COLLISION DAMAGE UNDER SUBSECTION (1)  
3 OR (2) ON BEHALF OF A PARTY WHO WAS NOT SUBSTANTIALLY AT FAULT IN  
4 THE ACCIDENT IS SUBROGATED TO THAT PARTY'S RIGHT TO RECOVER THOSE  
5 DAMAGES UNDER SECTION 3135.

6 (8) ~~(7)~~As used in this section:

7 (a) "Collision damage" does not include losses customarily  
8 insured under comprehensive coverages.

9 (b) "Substantially at fault" means a person's action or  
10 inaction was more than 50% of the cause of the accident.

11 ~~—— (8) This section shall take effect March 1, 1980.~~

12 Sec. 3135. (1) A person remains subject to tort liability for  
13 noneconomic loss caused by his or her ownership, maintenance, or  
14 use of a motor vehicle only if the injured person has suffered  
15 death, serious impairment of body function, or permanent serious  
16 disfigurement.

17 (2) For a cause of action for damages pursuant to subsection  
18 (1) filed on or after July 26, 1996, all of the following apply:

19 (a) The issues of whether an injured person has suffered  
20 serious impairment of body function or permanent serious  
21 disfigurement are questions of law for the court if the court finds  
22 either of the following:

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

25 (ii) There is a factual dispute concerning the nature and  
26 extent of the person's injuries, but the dispute is not material to  
27 the determination as to whether the person has suffered a serious

1 impairment of body function or permanent serious disfigurement.  
2 However, for a closed-head injury, a question of fact for the jury  
3 is created if a licensed allopathic or osteopathic physician who  
4 regularly diagnoses or treats closed-head injuries testifies under  
5 oath that there may be a serious neurological injury.

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

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

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

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

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

26 (c) Damages for allowable expenses, work loss, and survivor's  
27 loss as defined in sections 3107 to 3110 in excess of the daily,

1 monthly, and 3-year limitations contained in those sections. The  
2 party liable for damages is entitled to an exemption reducing his  
3 or her liability by the amount of taxes that would have been  
4 payable on account of income the injured person would have received  
5 if he or she had not been injured.

6 (d) Damages for economic loss by a nonresident in excess of  
7 the personal protection insurance benefits provided under section  
8 3163(4). Damages under this subdivision are not recoverable to the  
9 extent that benefits covering the same loss are available from  
10 other sources, regardless of the nature or number of benefit  
11 sources available and regardless of the nature or form of the  
12 benefits.

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

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

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

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

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

1 prevail, the judge may assess costs.

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

6 (7) As used in this section, "serious impairment of body  
7 function" means an objectively manifested impairment of an  
8 important body function that affects the person's general ability  
9 to lead his or her normal life.