

HOUSE BILL No. 5102

October 12, 2017, Introduced by Reps. Marino, Lasinski, Frederick, LaGrand, Moss, Brinks, Camilleri, Wittenberg, Chang, Ellison, Green, Sabo, Liberati, Webber, Sneller, Sowerby, Pagan, Faris, Byrd, Yaroch, Hammoud, Scott, Geiss, Robinson, Gay-Dagnogo and Jones 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 2012 PA 158.

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~~ **IN AN** action for damages ~~pursuant to~~ **FOR**
 7 **TORT LIABILITY THAT REMAINS UNDER** subsection (1) filed on or after
 8 July 26, 1996, all of the following apply:

9 (a) The issues of whether the injured person has suffered

1 serious impairment of body function or permanent serious
2 disfigurement are questions of law for the court if the court finds
3 either of the following:

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

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

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

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

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

25 (a) Intentionally caused harm to persons or property. Even
26 though a person knows that harm to persons or property is
27 substantially certain to be caused by his or her act or omission,

1 the person does not cause or suffer that harm intentionally if he
2 or she acts or refrains from acting for the purpose of averting
3 injury to any person, including himself or herself, or for the
4 purpose of averting damage to tangible property.

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

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

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

21 (e) Damages ~~up to \$1,000.00~~ **OF NOT MORE THAN \$5,000.00** to a
22 motor vehicle, to the extent that the damages are not covered by
23 insurance. An action for damages under this subdivision ~~shall~~ **MUST**
24 be conducted as provided in subsection (4).

25 (4) All of the following apply to an action for damages under
26 subsection (3) (e):

27 (a) Damages ~~shall~~ **MUST** be assessed on the basis of comparative

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

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

6 (c) The action ~~shall~~**MUST** be commenced, whenever legally
7 possible, in the small claims division of the district court or the
8 municipal court. If the defendant or plaintiff removes the action
9 to a higher court and does not prevail, the judge may assess costs.

10 (d) A decision of the court is not res judicata in any
11 proceeding to determine any other liability arising from the same
12 circumstances that gave rise to the action.

13 (e) Damages ~~shall~~**MUST** not be assessed if the damaged motor
14 vehicle was being operated at the time of the damage without the
15 security required by section 3101.

16 (5) As used in this section, "serious impairment of body
17 function" means an objectively manifested impairment of an
18 important body function that affects the person's general ability
19 to lead his or her normal life.

20 Enacting section 1. This amendatory act takes effect 90 days
21 after the date it is enacted into law.