

HOUSE BILL No. 5104

October 12, 2017, Introduced by Reps. Canfield, Frederick, Bizon, Sabo, Liberati, Faris, Sneller, Byrd, Yaroch and Scott and referred to the Committee on Insurance.

A bill to amend 1956 PA 218, entitled "The insurance code of 1956," by amending sections 3142 and 3157 (MCL 500.3142 and 500.3157) and by adding section 3149.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3142. (1) Personal protection insurance benefits are
2 payable as loss accrues.

3 (2) Personal protection insurance benefits are overdue if not
4 paid within 30 days after an insurer receives reasonable proof of
5 the fact and of the amount of loss sustained. If reasonable proof
6 is not supplied as to the entire claim, the amount supported by
7 reasonable proof is overdue if not paid within 30 days after the
8 proof is received by the insurer. Any part of the remainder of the

1 claim that is later supported by reasonable proof is overdue if not
2 paid within 30 days after the proof is received by the insurer. For
3 the purpose of calculating the extent to which benefits are
4 overdue, payment ~~shall~~**MUST** be treated as made on the date a draft
5 or other valid instrument was placed in the United States mail in a
6 properly addressed, postpaid envelope, or, if not so posted, on the
7 date of delivery.

8 (3) An overdue payment bears simple interest at the rate of
9 12% per annum.

10 (4) **FOR A CLAIM UNDER A POLICY THAT PROVIDES PERSONAL**
11 **PROTECTION INSURANCE BENEFITS THAT ARE COORDINATED WITH, OR THAT**
12 **HAS DEDUCTIBLES OR EXCLUSIONS REASONABLY RELATED TO, OTHER HEALTH**
13 **AND ACCIDENT COVERAGE ON THE INJURED PERSON UNDER SECTION 3109A,**
14 **THE INSURER SHALL NOT DEMAND THE PRODUCTION OF ANY 1 PARTICULAR**
15 **TYPE OF DOCUMENTATION TO PROVE WHETHER ANY HEALTH AND ACCIDENT**
16 **COVERAGE IS APPLICABLE TO THE CLAIM. THE INSURER SHALL ACCEPT ANY**
17 **OF THE FOLLOWING TYPES OF DOCUMENTATION REASONABLY DEMONSTRATING**
18 **THAT NO OTHER HEALTH AND ACCIDENT COVERAGE IS APPLICABLE TO THE**
19 **CLAIM, OR COVERS THE SPECIFIC CLAIMED BENEFIT AT ISSUE:**

20 (A) **A COPY OF THE HEALTH INSURANCE PLAN OR POLICY; A SUMMARY**
21 **PLAN DESCRIPTION; OR SOME OTHER HEALTH PLAN DOCUMENTATION**
22 **CONTAINING ACTUAL PLAN LANGUAGE, OR A SUMMARY OF THE PLAN LANGUAGE,**
23 **SHOWING THAT THE CLAIMED BENEFIT IS EITHER NOT A BENEFIT OR NOT**
24 **PAYABLE UNDER THE PLAN.**

25 (B) **AN EXPLANATION OF BENEFIT OR EXPLANATION OF REVIEW FORM**
26 **SHOWING THAT THE CLAIMED BENEFIT IS EITHER NOT A BENEFIT OR NOT**
27 **PAYABLE UNDER THE PLAN.**

1 (C) ANY OTHER DOCUMENTATION OR INFORMATION, INCLUDING
2 CORRESPONDENCE OR OTHER COMMUNICATION FROM AN AUTHORIZED
3 REPRESENTATIVE OF THE OTHER HEALTH AND ACCIDENT COVERAGE PLAN,
4 SHOWING THAT THE CLAIMED BENEFIT IS EITHER NOT A BENEFIT OR NOT
5 PAYABLE UNDER THE PLAN.

6 (5) BY JANUARY 1, 2018, AN AUTOMOBILE INSURER OR THE
7 ASSOCIATION CREATED UNDER SECTION 3104 SHALL ACCEPT ELECTRONIC
8 DOCUMENTATION OF PROOF OF A PERSONAL PROTECTION INSURANCE CLAIM AND
9 THE AMOUNT OF THE LOSS SUSTAINED.

10 SEC. 3149. (1) AN INSURER THAT IS OBLIGATED TO PAY CLAIMS FOR
11 PERSONAL PROTECTION INSURANCE BENEFITS UNDER THIS CHAPTER HAS A
12 DUTY TO DEAL FAIRLY AND IN GOOD FAITH WITH A PERSON CLAIMING
13 BENEFITS AND THE PERSON'S SERVICE PROVIDERS.

14 (2) AN INSURER THAT BREACHES THE DUTY IMPOSED UNDER THIS
15 SECTION IS LIABLE FOR COMPENSATORY, CONSEQUENTIAL, ECONOMIC,
16 NONECONOMIC, AND EXEMPLARY DAMAGES PROXIMATELY CAUSED BY THE BREACH
17 AND ACTUAL ATTORNEY FEES AND THE RELATED COSTS OF LITIGATION.

18 (3) CONDUCT THAT CONSTITUTES A BREACH OF THE DUTY IMPOSED
19 UNDER THIS SECTION INCLUDES, BY WAY OF EXAMPLE AND NOT BY WAY OF
20 LIMITATION, ANY OF THE FOLLOWING:

21 (A) MAKING A STATEMENT OR REPRESENTATION REGARDING THE LEGAL
22 RIGHTS OF THE CLAIMANT OR A SERVICE PROVIDER OR THE LEGAL DUTIES
23 AND OBLIGATIONS OF THE INSURER THAT IS MATERIALLY FALSE OR
24 DECEPTIVE, IF THE FALSITY OR DECEPTIVENESS OF THE STATEMENT OR
25 MISREPRESENTATION WAS KNOWN, OR SHOULD HAVE BEEN KNOWN, BY THE
26 INSURER OR ITS AGENTS OR REPRESENTATIVES WHEN THE STATEMENT OR
27 MISREPRESENTATION WAS MADE.

1 (B) MAKING A THREAT OR AN ACT OF INTIMIDATION OR RETALIATION
2 AGAINST THE CLAIMANT OR A SERVICE PROVIDER REGARDING THE
3 SUBMISSION, ADJUSTMENT, OR PAYMENT OF A CLAIM FOR BENEFITS UNDER
4 THIS ACT.

5 (C) FAILING TO PAY THE CLAIM OR A PORTION OF THE CLAIM IF IT
6 REASONABLY APPEARS THAT THE INSURER OWES THE CLAIM OR PORTION OF
7 THE CLAIM.

8 (D) DEMANDING THAT THE CLAIMANT SUBMIT TO A MENTAL OR PHYSICAL
9 EXAMINATION UNDER SECTION 3151 PERFORMED BY AN EXAMINER TO WHOM 1
10 OR MORE OF THE FOLLOWING APPLY:

11 (i) THE EXAMINER IS ROUTINELY HIRED BY INSURERS TO CONDUCT
12 EXAMINATIONS AND HAS DEMONSTRATED HIMSELF OR HERSELF TO BE BIASED
13 IN FAVOR OF INSURERS OR IS OTHERWISE NOT FAIR AND IMPARTIAL WITH
14 RESPECT TO CLAIMANTS SEEKING BENEFITS UNDER THIS CHAPTER.

15 (ii) THE EXAMINER DOES NOT PRACTICE IN THE SAME SPECIALTY AS
16 THE HEALTH CARE PROFESSIONAL WHO IS TREATING THE CLAIMANT.

17 (iii) THE EXAMINER DEVOTES LESS THAN A MAJORITY OF HIS OR HER
18 PROFESSIONAL TIME TO ACTIVE CLINICAL PRACTICE OR INSTRUCTION OF
19 STUDENTS IN AN ACCREDITED HEALTH PROFESSIONAL SCHOOL OR ACCREDITED
20 RESIDENCY OR CLINICAL RESEARCH PROGRAM.

21 (E) FAILING TO MAKE REASONABLE EFFORTS TO RECONCILE
22 CONFLICTING MEDICAL OPINIONS AND DOCUMENTATION IF IT REASONABLY
23 APPEARS THAT A CONFLICT EXISTS, PARTICULARLY IF THERE IS A CONFLICT
24 BETWEEN THE MEDICAL OPINIONS OF THE CLAIMANT'S TREATING MEDICAL
25 PROVIDERS AND THE OPINIONS OF AN EXAMINER HIRED BY THE INSURER.

26 (F) DEMANDING THAT THE CLAIMANT OR A SERVICE PROVIDER SUBMIT
27 UNNECESSARY AND EXCESSIVE DOCUMENTATION IN SUPPORT OF THE CLAIM IF

1 IT APPEARS THAT THE CLAIMANT OR PROVIDER HAS SUBMITTED REASONABLE
2 PROOF IN CONNECTION WITH THE CLAIM.

3 (G) ANY OTHER CONDUCT THAT DEMONSTRATES THE INSURER HAS NOT
4 DEALT FAIRLY AND IN GOOD FAITH WITH THE CLAIMANT OR A SERVICE
5 PROVIDER IN CONNECTION WITH THE CLAIM.

6 Sec. 3157. (1) A physician, hospital, clinic, or other ~~person~~
7 ~~or~~ MEDICAL institution OR OTHER PERSON THAT lawfully ~~rendering~~
8 RENDERS treatment to an injured person for an accidental bodily
9 injury covered by personal protection insurance, ~~and a person or~~
10 ~~institution~~ INCLUDING, BUT NOT LIMITED TO, providing rehabilitative
11 occupational training following the injury, may charge a reasonable
12 amount for the products, services, ~~and~~ OR accommodations rendered.
13 The charge ~~shall~~ MUST not exceed the amount the person ~~or~~
14 ~~institution~~ customarily charges for like products, services, ~~and~~ OR
15 accommodations in cases THAT DO not ~~involving~~ INVOLVE insurance.

16 (2) AFTER JUNE 30, 2018, EXCEPT AS OTHERWISE PROVIDED IN
17 SUBSECTION (5), A PERSON, INCLUDING A HOSPITAL, CLINIC, OR OTHER
18 MEDICAL INSTITUTION, THAT LAWFULLY RENDERS PRODUCTS, SERVICES, OR
19 ACCOMMODATIONS TO AN INJURED PERSON FOR AN ACCIDENTAL BODILY INJURY
20 COVERED BY PERSONAL PROTECTION INSURANCE IS ENTITLED TO BE PAID FOR
21 THE SERVICES AT 185% OF THE MAXIMUM AMOUNT PAYABLE UNDER SCHEDULES
22 OF FEES FOR WORKER'S COMPENSATION CONTAINED IN R 418.10101 TO R
23 418.101503 OF THE MICHIGAN ADMINISTRATIVE CODE THAT ARE IN EFFECT
24 ON THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS
25 SUBSECTION.

26 (3) BY OCTOBER 1 OF EACH YEAR AFTER 2017, THE DIRECTOR SHALL
27 ADJUST THE PAYMENT AMOUNTS UNDER SUBSECTION (2) FOR THE FOLLOWING

1 CALENDAR YEAR TO THE GREATER OF THE FOLLOWING:

2 (A) ONE HUNDRED EIGHTY-FIVE PERCENT OF THE MAXIMUM AMOUNT
3 PAYABLE FOR PRODUCTS, SERVICES, OR ACCOMMODATIONS UNDER SCHEDULES
4 OF FEES FOR WORKER'S COMPENSATION CONTAINED IN R 418.10101 TO R
5 418.101503 OF THE MICHIGAN ADMINISTRATIVE CODE THAT ARE IN EFFECT
6 ON THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS
7 SUBSECTION.

8 (B) ONE HUNDRED EIGHTY-FIVE PERCENT OF THE MAXIMUM AMOUNT
9 PAYABLE FOR PRODUCTS, SERVICES, OR ACCOMMODATIONS UNDER SCHEDULES
10 OF FEES FOR WORKER'S COMPENSATION CONTAINED IN R 418.10101 TO R
11 418.101503 OF THE MICHIGAN ADMINISTRATIVE CODE THAT ARE IN EFFECT
12 ON THE DATE OF THE ADJUSTMENT.

13 (C) THE AMOUNT PAYABLE FOR PRODUCTS, SERVICES, OR
14 ACCOMMODATIONS UNDER SUBSECTION (2) AS PREVIOUSLY ADJUSTED, IF
15 APPLICABLE, UNDER THIS SUBSECTION, ADJUSTED TO REFLECT THE
16 PERCENTAGE CHANGE IN THE MEDICAL CARE COMPONENT OF THE UNITED
17 STATES CONSUMER PRICE INDEX FOR THE MOST RECENT 12-MONTH PERIOD FOR
18 WHICH DATA ARE AVAILABLE.

19 (4) AN ADJUSTMENT TO FEES UNDER SUBSECTION (3) APPLIES TO
20 CHARGES FOR PRODUCTS, SERVICES, OR ACCOMMODATIONS RENDERED ON OR
21 AFTER THE DATE OF THE ADJUSTMENT.

22 (5) NOTWITHSTANDING SUBSECTIONS (2) TO (4), A PERSON THAT
23 RENDERS PRODUCTS, SERVICES, OR ACCOMMODATIONS MAY, AT ITS SOLE
24 DISCRETION, CHARGE AND ACCEPT PAYMENT IN AN AMOUNT THAT IS LESS
25 THAN THE AMOUNT PROVIDED UNDER SUBSECTIONS (2) TO (4).

26 (6) SUBSECTIONS (2) TO (4) ONLY LIMIT THE DOLLAR AMOUNT
27 PAYABLE FOR PRODUCTS, SERVICES, OR ACCOMMODATIONS, AND DO NOT LIMIT

1 THE SCOPE OR DURATION OF PRODUCTS, SERVICES, OR ACCOMMODATIONS THAT
2 ARE ALLOWABLE EXPENSES PAYABLE AS PERSONAL PROTECTION BENEFITS
3 UNDER SECTION 3107(1) (A) .

4 (7) SUBSECTIONS (2) TO (6) APPLY TO MOTOR VEHICLE ACCIDENTS
5 THAT OCCUR AFTER JUNE 30, 2018.

6 (8) SUBSECTIONS (2) TO (7) AND (9) DO NOT APPLY TO EITHER OF
7 THE FOLLOWING:

8 (A) PRODUCTS, SERVICES, OR ACCOMMODATIONS AT A HOSPITAL
9 DESIGNATED AS A LEVEL I OR II TRAUMA CENTER BY THE AMERICAN COLLEGE
10 OF SURGEONS COMMITTEE ON TRAUMA.

11 (B) ATTENDANT CARE, HOME HEALTH AIDE CARE, OR HOME NURSING
12 CARE, REGARDLESS OF THE LEVEL OF SKILL OR TRAINING INVOLVED IN THE
13 CARE.

14 (9) AS USED IN THIS SECTION, "PRODUCTS, SERVICES, OR
15 ACCOMMODATIONS" MEANS THOSE PRODUCTS, SERVICES, OR ACCOMMODATIONS
16 UNDER SECTION 3107(1) (A) THAT ARE SPECIFICALLY DESCRIBED AND
17 MONETARILY QUANTIFIED TO BE GREATER THAN ZERO UNDER SCHEDULES OF
18 FEES FOR WORKER'S COMPENSATION CONTAINED IN R 418.10101 TO R
19 418.101503 OF THE MICHIGAN ADMINISTRATIVE CODE THAT ARE IN EFFECT
20 ON THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS
21 SUBSECTION. A PRODUCT, SERVICE, OR ACCOMMODATION NOT SPECIFICALLY
22 DESCRIBED OR MONETARILY QUANTIFIED TO BE GREATER THAN ZERO UNDER
23 SCHEDULES OF FEES FOR WORKER'S COMPENSATION CONTAINED IN R
24 418.10101 TO R 418.101503 OF THE MICHIGAN ADMINISTRATIVE CODE THAT
25 ARE IN EFFECT ON THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT
26 ADDED THIS SUBSECTION ARE SUBJECT TO THE REQUIREMENTS OF SECTION
27 3107(1) (A) .

1 Enacting section 1. This amendatory act does not take effect
2 unless Senate Bill No.____ or House Bill No.____ (request no.
3 04183'17) of the 99th Legislature is enacted into law.