

HOUSE BILL No. 5105

October 12, 2017, Introduced by Reps. Webber, Marino, Canfield, Frederick, Chirkun, LaGrand, Moss, Brinks, Camilleri, Wittenberg, Chang, Ellison, Green, Sabo, Liberati, Sowerby, Sneller, Pagan, Lasinski, Faris, Love, Byrd, Yaroch, Hammoud, Scott, Geiss, Elder, Hertel, Zemke, Greimel, Jones and Gay-Dagnogo and referred to the Committee on Insurance.

A bill to amend 1956 PA 218, entitled
 "The insurance code of 1956,"
 by amending section 3107 (MCL 500.3107), as amended by 2012 PA 542.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3107. (1) Except as provided in subsection (2), personal
 2 protection insurance benefits are payable for the following:

3 (a) Allowable expenses consisting of all reasonable charges
 4 incurred for reasonably necessary products, services, and
 5 accommodations for an injured person's care, recovery, or
 6 rehabilitation. Allowable expenses within personal protection
 7 insurance coverage ~~shall~~**DO** not include either of the following:

8 (i) Charges for a hospital room in excess of a reasonable and
 9 customary charge for semiprivate accommodations except if the

1 injured person requires special or intensive care.

2 (ii) Funeral and burial expenses in excess of the amount set
3 forth in the policy, which ~~shall~~**MUST** not be less than \$1,750.00 or
4 more than \$5,000.00.

5 (b) Work loss consisting of loss of income from work an
6 injured person would have performed during the first 3 years after
7 the date of the accident if he or she had not been injured. Work
8 loss does not include any loss after the date on which the injured
9 person dies. Because the benefits received from personal protection
10 insurance for loss of income are not taxable income, the benefits
11 payable for ~~such~~ loss of income ~~shall~~**MUST** be reduced 15% unless
12 the claimant presents to the insurer in support of his or her claim
13 reasonable proof of a lower value of the income tax advantage in
14 his or her case, in which case the lower value ~~shall apply~~.

15 **APPLIES**. For the period beginning October 1, 2012 through September
16 30, 2013, the benefits payable for work loss sustained in a single
17 30-day period and the income earned by an injured person for work
18 during the same period together ~~shall~~**MUST** not exceed \$5,189.00,
19 which maximum ~~shall apply~~**MUST BE APPLIED** pro rata to any lesser
20 period of work loss. Beginning October 1, 2013, the maximum ~~shall~~
21 **MUST** be adjusted annually to reflect changes in the cost of living
22 under rules prescribed by the ~~commissioner~~**DIRECTOR**, but any change
23 in the maximum ~~shall apply~~**APPLIES** only to benefits arising out of
24 accidents ~~occurring subsequent to~~**THAT OCCUR AFTER** the date of
25 change in the maximum.

26 (c) Expenses not exceeding \$20.00 per day, reasonably incurred
27 in obtaining ordinary and necessary services ~~in lieu~~**INSTEAD** of

1 those that, if he or she had not been injured, an injured person
2 would have performed during the first 3 years after the date of the
3 accident, not for income but for the benefit of himself or herself
4 or of his or her dependent.

5 (2) Both of the following apply to personal protection
6 insurance benefits payable under subsection (1):

7 (a) A person who is 60 years of age or older and in the event
8 of an accidental bodily injury would not be eligible to receive
9 work loss benefits under subsection (1)(b) may waive coverage for
10 work loss benefits by signing a waiver on a form provided by the
11 insurer. An insurer shall offer a reduced premium rate to a person
12 who waives coverage under this subsection for work loss benefits.
13 Waiver of coverage for work loss benefits applies only to work loss
14 benefits payable to the person or persons who have signed the
15 waiver form.

16 (b) An insurer ~~shall~~**IS** not be required to provide coverage
17 for the medical use of marihuana or for expenses related to the
18 medical use of marihuana.

19 **(3) ALL OF THE FOLLOWING APPLY TO A CLAIM FOR ALLOWABLE**
20 **EXPENSES UNDER SUBSECTION (1) (A) :**

21 **(A) THE REQUIRED CAUSAL CONNECTION BETWEEN AN ACCIDENTAL**
22 **BODILY INJURY AND THE CLAIM IS CONSIDERED TO BE ESTABLISHED IF BOTH**
23 **OF THE FOLLOWING APPLY:**

24 **(i) THE ACCIDENTAL BODILY INJURY, OR ITS CONSEQUENCES, IS 1 OF**
25 **THE CAUSES, DIRECT OR INDIRECT, OF THE INJURED PERSON'S NEED FOR**
26 **THE CLAIMED ALLOWABLE EXPENSE, EVEN THOUGH THERE MAY BE OTHER**
27 **CAUSES, CONDITIONS, OR REASONS CONTRIBUTING TO THAT NEED.**

1 (ii) THE CLAIMED CAUSAL CONNECTION IS NOT SO INCIDENTAL OR
2 ATTENUATED AS TO BE CONSIDERED DE MINIMIS.

3 (B) SUBJECT TO SUBDIVISION (A), AN INSURER SHALL NOT DENY
4 PAYMENT OF A CLAIM, OR A PORTION OF A CLAIM, FOR A PRODUCT,
5 SERVICE, OR ACCOMMODATION ON THE GROUNDS THAT IT IS AN EVERYDAY
6 ORDINARY EXPENSE THAT THE INJURED PERSON WOULD HAVE INCURRED FOR
7 SIMILAR PRODUCTS, SERVICES, OR ACCOMMODATIONS HAD THE ACCIDENTAL
8 BODILY INJURY NOT OCCURRED, IF IT IS SHOWN THAT THE INJURED
9 PERSON'S NEED FOR THE CLAIMED PRODUCT, SERVICE, OR ACCOMMODATION HAS
10 BEEN AFFECTED OR ALTERED BY THE ACCIDENTAL BODILY INJURY THAT GIVES
11 RISE TO THE CLAIM. IF SUCH A SHOWING IS MADE, THE CLAIM MAY NOT BE
12 REDUCED OR DIMINISHED BY ANY AMOUNT THAT ALLEGEDLY REPRESENTS
13 EXPENSES THAT THE INJURED PERSON WOULD HAVE INCURRED FOR SIMILAR
14 PRODUCTS, SERVICES, OR ACCOMMODATIONS HAD THE ACCIDENTAL BODILY
15 INJURY NOT OCCURRED.

16 (C) A CHARGE FOR A PRODUCT, SERVICE, OR ACCOMMODATION IS
17 DEEMED TO HAVE BEEN INCURRED BY THE INJURED PERSON IF ANY OF THE
18 FOLLOWING HAVE BEEN DEMONSTRATED:

19 (i) THE INJURED PERSON OR HIS OR HER ESTATE HAS PAID ALL OR
20 PART OF THE CHARGE OR HAS BECOME LIABLE, UNCONDITIONALLY OR
21 CONDITIONALLY, TO PAY ALL OR PART OF THE CHARGE.

22 (ii) THE INJURED PERSON OR HIS OR HER ESTATE HAS PROVIDED
23 WRITTEN DOCUMENTATION TO THE INSURER THAT REASONABLY ESTABLISHES
24 THAT THE CHARGE IS FOR A PRODUCT, SERVICE, OR ACCOMMODATION THAT IS
25 REASONABLY NECESSARY FOR THE INJURED PERSON'S CARE, RECOVERY, OR
26 REHABILITATION.

27 (iii) THE PRODUCT, SERVICE, OR ACCOMMODATION HAS ACTUALLY BEEN

1 PROVIDED TO THE INJURED PERSON.

2 (D) IF THE INJURED PERSON, OR SOMEONE ACTING ON HIS OR HER
3 BEHALF, SUBMITS REASONABLE PROOF THAT A PARTICULAR PRODUCT,
4 SERVICE, OR ACCOMMODATION IS REASONABLY NECESSARY FOR THE INJURED
5 PERSON'S CARE, RECOVERY, OR REHABILITATION AND THE INJURED PERSON
6 DESIRES TO BE PROVIDED WITH THAT PRODUCT, SERVICE, OR
7 ACCOMMODATION, THE EXPENSE FOR THE PRODUCT, SERVICE, OR
8 ACCOMMODATION IS DEEMED TO HAVE BEEN INCURRED AND THE INSURER
9 RESPONSIBLE TO PAY THE CLAIM SHALL ISSUE WRITTEN PRIOR APPROVAL TO
10 THE INJURED PERSON OR SOMEONE ACTING ON THE INJURED PERSON'S BEHALF
11 AND TO THE PROVIDER OF THE PRODUCT, SERVICE, OR ACCOMMODATION THAT
12 THE INSURER WILL MAKE PAYMENT WHEN THE PRODUCT, SERVICE, OR
13 ACCOMMODATION HAS BEEN PROVIDED TO THE INJURED PERSON. FAILURE TO
14 ISSUE WRITTEN PRIOR APPROVAL UNDER THIS SUBDIVISION WITHIN 30 DAYS
15 AFTER RECEIVING REASONABLE PROOF AS PROVIDED IN THIS SUBSECTION IS
16 DEEMED TO BE A DENIAL OF THE CLAIM AND CREATES A PRESUMPTION THAT
17 THE DENIAL WAS UNREASONABLE UNDER SECTION 3148(1). TO OVERCOME A
18 PRESUMPTION THAT ARISES UNDER THIS SUBDIVISION, THE INSURER MUST
19 PRESENT CLEAR AND CONVINCING EVIDENCE TO THE CONTRARY.

20 (4) A CLAIM FOR PERSONAL PROTECTION INSURANCE BENEFITS MAY BE
21 MADE AND ENFORCED BY A CIVIL ACTION FILED BY THE INJURED PERSON, BY
22 THE INJURED PERSON'S REPRESENTATIVE OR FIDUCIARY, OR BY A PERSON
23 THAT HAS DELIVERED, RENDERED, OR PROVIDED A PRODUCT, SERVICE, OR
24 ACCOMMODATION FOR THE INJURED PERSON'S CARE, RECOVERY, OR
25 REHABILITATION.