

HOUSE BILL No. 5109

October 12, 2017, Introduced by Reps. Wittenberg, Marino, Lasinski, Chirkun, LaGrand, Moss, Brinks, Camilleri, Chang, Ellison, Green, Sabo, Liberati, Sowerby, Sneller, Pagan, Faris, Byrd, Hammoud, Scott, Geiss, Greimel, Rabhi, Robinson, Hertel, Zemke, 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 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 the injured person has suffered
 9 serious impairment of body function or permanent serious
 10 disfigurement are questions of law ~~for the court~~ **FACT** if the court

1 finds ~~either of the following:~~

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

4 ~~—— (ii) There is a factual dispute concerning the nature and~~
5 ~~extent of the person's injuries, but the dispute is not material to~~
6 ~~the determination~~ **THAT THERE IS NO GENUINE ISSUE OF MATERIAL FACT**

7 **AND NO REASONABLE MINDS COULD DIFFER REGARDING** whether the **INJURED**
8 person has suffered a serious impairment of body function or
9 permanent serious disfigurement. ~~However, for~~ **THESE QUESTIONS ARE**
10 **FACT-SPECIFIC AND MUST BE DETERMINED ON A CASE-BY-CASE BASIS. FOR** a
11 closed-head injury, a question of fact for the jury is created if a
12 licensed allopathic or osteopathic physician who regularly
13 diagnoses or treats closed-head injuries testifies under oath that
14 there may be a serious neurological injury.

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

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

22 **(D) THE ISSUE OF WHETHER THE INJURED PERSON HAS SUSTAINED A**
23 **SERIOUS IMPAIRMENT OF BODILY FUNCTION IS FACT-SPECIFIC AND MUST BE**
24 **DETERMINED ON A CASE-BY-CASE BASIS.**

25 (3) Notwithstanding any other provision of law, tort liability
26 arising from the ownership, maintenance, or use within this state
27 of a motor vehicle with respect to which the security required by

1 section 3101 was in effect is abolished except as to:

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

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

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

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

26 (e) Damages up to \$1,000.00 to a motor vehicle, to the extent
27 that the damages are not covered by insurance. An action for

1 damages under this subdivision ~~shall~~**MUST** be conducted as provided
2 in subsection (4).

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

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

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

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

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

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

21 (5) As used in this section, "serious impairment of body
22 function" means an **IMPAIRMENT THAT SATISFIES ALL OF THE FOLLOWING**
23 **REQUIREMENTS:**

24 **(A) IT IS** objectively manifested, **MEANING IT IS OBSERVABLE OR**
25 **PERCEIVABLE FROM ACTUAL SYMPTOMS OR CONDITIONS.**

26 **(B) IT IS AN** impairment of an important body function, ~~that~~
27 **WHICH IS A BODY FUNCTION OF VALUE, SIGNIFICANCE, OR CONSEQUENCE TO**

1 THE INJURED PERSON.

2 (C) IT affects the INJURED person's general ability to lead
3 his or her normal life, MEANING IT HAS AN INFLUENCE ON SOME OF THE
4 INJURED PERSON'S CAPACITY TO LIVE IN HIS OR HER NORMAL MANNER OF
5 LIVING. THERE IS NO QUANTITATIVE MINIMUM AS TO THE PERCENTAGE OF A
6 PERSON'S NORMAL MANNER OF LIVING THAT MUST BE AFFECTED, NOR IS
7 THERE AN EXPRESS TEMPORAL REQUIREMENT AS TO HOW LONG AN IMPAIRMENT
8 MUST LAST IN ORDER TO HAVE AN EFFECT ON THE PERSON'S GENERAL
9 ABILITY TO LEAD HIS OR HER NORMAL LIFE. HOWEVER, TEMPORAL
10 CONSIDERATIONS ARE NOT IRRELEVANT.