

SENATE BILL No. 83

January 27, 2009, Introduced by Senator WHITMER and referred to the Committee on Government Operations and Reform.

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

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 an injured person has suffered
9 serious impairment of body function or permanent serious
10 disfigurement are questions of law for the court if the court finds

1 ~~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 as to whether the person has suffered a serious~~
7 ~~impairment of body function or permanent serious disfigurement.~~

8 **THAT THERE IS NO GENUINE ISSUE AS TO ANY MATERIAL FACT, AND THE**
9 **MOVING PARTY IS ENTITLED TO JUDGMENT OR PARTIAL JUDGMENT AS A**
10 **MATTER OF LAW.** However, for a closed-head injury, a question of
11 fact for the jury is created if a licensed allopathic or
12 osteopathic physician who regularly diagnoses or treats closed-head
13 injuries testifies under oath that there may be a serious
14 neurological injury.

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

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

22 **(B) ECONOMIC AND NONECONOMIC DAMAGES SHALL BE ASSESSED ON THE**
23 **BASIS OF COMPARATIVE FAULT, EXCEPT THAT NONECONOMIC DAMAGES SHALL**
24 **NOT BE ASSESSED IN FAVOR OF A PLAINTIFF WHO IS MORE THAN 50% AT**
25 **FAULT OR REDUCED IN FAVOR OF A DEFENDANT WHO IS MORE THAN 50% AT**
26 **FAULT.**

27 **(C) NONECONOMIC DAMAGES SHALL NOT BE ASSESSED IN FAVOR OF A**

1 PARTY WHO WAS OPERATING A MOTOR VEHICLE TITLED OR REGISTERED IN THE
2 NAME OF THAT PARTY AT THE TIME THE INJURY OCCURRED IF THERE WAS NOT
3 IN EFFECT FOR THAT MOTOR VEHICLE THE SECURITY REQUIRED BY SECTION
4 3101 AT THE TIME THE INJURY OCCURRED.

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

9 (a) Intentionally caused ~~harm~~ **ECONOMIC OR NONECONOMIC DAMAGES**
10 **OF ANY NATURE OR EXTENT** to persons or property. Even though a
11 person knows that harm to persons or property is substantially
12 certain to be caused by his or her act or omission, the person does
13 not cause or suffer that harm intentionally if he or she acts or
14 refrains from acting for the purpose of averting injury to any
15 person, including himself or herself, or for the purpose of
16 averting damage to tangible property.

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

19 (c) Damages for allowable expenses, work loss, and survivor's
20 loss as defined in sections 3107 to 3110 in excess of the daily,
21 monthly, and 3-year limitations contained in those sections **AND**
22 **DAMAGES FOR LOSS OF EARNING CAPACITY**. The party liable for damages
23 is entitled to an exemption reducing his or her liability by the
24 amount of taxes that would have been payable on account of income
25 the injured person would have received if he or she had not been
26 injured.

27 (d) Damages for economic loss by a nonresident in excess of

1 the personal protection insurance benefits provided under section
2 3163(4). Damages under this subdivision are not recoverable to the
3 extent that benefits covering the same loss are available from
4 other sources, regardless of the nature or number of benefit
5 sources available and regardless of the nature or form of the
6 benefits.

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

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

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

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

18 (5) Actions under subsection (3)(e) shall be commenced,
19 whenever legally possible, in the small claims division of the
20 district court or the municipal court. If the defendant or
21 plaintiff removes the action to a higher court and does not
22 prevail, the judge may assess costs.

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

27 (7) As used in this section, "serious impairment of body

1 function" means an objectively manifested **INJURY OR** impairment of
2 **INVOLVING** an important body function that **HAS AFFECTED**, affects, OR
3 **MAY AFFECT IN THE FUTURE** the person's ~~general~~ ability to lead his
4 or her normal life. **IN MAKING THIS DETERMINATION, ALL OF THE**
5 **FOLLOWING APPLY:**

6 (A) **NOTWITHSTANDING ANYTHING TO THE CONTRARY, SERIOUS**
7 **IMPAIRMENT OF BODY FUNCTION DOES NOT REQUIRE A SHOWING, AT ANY**
8 **POINT IN TIME, OF ANY OF THE FOLLOWING:**

9 (i) **THAT THE INJURY OR IMPAIRMENT, OR ITS EFFECT, ALTERED THE**
10 **COURSE OR TRAJECTORY OF THE PERSON'S LIFE, CAUSED THE PERSON TO BE**
11 **GENERALLY UNABLE OR FOR THE MOST PART UNABLE TO LIVE HIS OR HER**
12 **NORMAL LIFE, OR CAUSED THE PERSON'S LIFE AFTER THE INJURY TO BE**
13 **SUBSTANTIALLY DIFFERENT FROM THE PERSON'S LIFE BEFORE THE INJURY.**

14 (ii) **THAT THE INJURY OR IMPAIRMENT, OR ITS EFFECT, WAS**
15 **PERMANENT, SEVERE, SUBSTANTIAL, EXTENSIVE, OR PERVASIVE OR LASTED**
16 **FOR A SIGNIFICANT PERIOD OF TIME.**

17 (iii) **THAT THERE WERE PHYSICIAN-IMPOSED RESTRICTIONS.**

18 (B) **IN DETERMINING WHETHER THE PERSON'S ABILITY TO LEAD HIS OR**
19 **HER NORMAL LIFE HAS BEEN AFFECTED AT ANY POINT IN TIME, THE TRIER**
20 **OF FACT OR A COURT DECIDING THIS ISSUE AS A MATTER OF LAW UNDER**
21 **SUBSECTION (2) (A) SHALL CONSIDER ALL OF THE FOLLOWING FACTORS,**
22 **WHICH FACTORS SHALL NOT BE EXCLUSIVE AND NO INDIVIDUAL FACTOR SHALL**
23 **BE DISPOSITIVE:**

24 (i) **THE NATURE OF THE INJURY OR IMPAIRMENT.**

25 (ii) **THE TYPE OF TREATMENT REQUIRED.**

26 (iii) **THE DURATION OF THE INJURY, IMPAIRMENT, OR TREATMENT.**

27 (iv) **THE EXISTENCE OF, OR THE PROGNOSIS FOR, ANY RESIDUAL**

1 INJURY OR IMPAIRMENT.

2 (v) THE IMPACT OF THE INJURY OR IMPAIRMENT ON THE INJURED
3 PERSON'S QUALITY OF LIFE.

4 (vi) ANY OTHER RELEVANT FACTORS.

5 (8) AN INJURED PERSON WHO HAS SUSTAINED SERIOUS IMPAIRMENT OF
6 BODY FUNCTION AND WHO IS OTHERWISE ENTITLED TO RECOVER DAMAGES FOR
7 NONECONOMIC LOSS IN A TORT LIABILITY CLAIM AS A RESULT IS ENTITLED
8 TO ALL DAMAGES FOR NONECONOMIC LOSS SUFFERED BY THAT PERSON AS A
9 PROXIMATE RESULT OF THE INCIDENT GIVING RISE TO THE TORT LIABILITY
10 CLAIM, REGARDLESS OF WHETHER THE INJURED PERSON HAS CEASED TO
11 SUFFER, OR IN THE FUTURE WILL CEASE TO SUFFER, SERIOUS IMPAIRMENT
12 OF BODY FUNCTION.

13 (9) IF AN INJURED PERSON RECOVERS DAMAGES UNDER THIS SECTION
14 FOR NONECONOMIC LOSS OR EXCESS ECONOMIC LOSS AND IS REQUIRED TO PAY
15 ALL OR A PORTION OF THAT RECOVERY TO ANY PERSON OR ENTITY CLAIMING
16 A LIEN OR RIGHT OF REIMBURSEMENT, SUBROGATION, RECOUPMENT, OR
17 OFFSET AGAINST THE RECOVERY, THE INSURER RESPONSIBLE TO PAY
18 PERSONAL PROTECTION INSURANCE BENEFITS TO THE INJURED PERSON SHALL
19 REIMBURSE THE INJURED PERSON FOR THE AMOUNT HE OR SHE IS REQUIRED
20 TO PAY THE PERSON OR ENTITY TO THE EXTENT THAT THE PAYMENT WOULD
21 HAVE BEEN PAYABLE BY THE INSURER IF THE PERSON OR ENTITY HAD NOT
22 PAID THOSE AMOUNTS.

23 (10) THE CHANGES MADE IN SUBSECTION (7) BY THE AMENDATORY ACT
24 THAT ADDED THIS SUBSECTION ARE CURATIVE AND INTENDED TO CORRECT THE
25 MISINTERPRETATION OF LAW AND LEGISLATIVE INTENT THAT OCCURRED IN
26 THE MICHIGAN SUPREME COURT DECISION IN KREINER V FISCHER AND STRAUB
27 V COLLETTE AND HEIL-WYLIE, 471 MICH 109; 683 NW2D 611 (2004), AND

1 SUBSEQUENT APPELLATE CASES IMPLEMENTING THAT DECISION.

2 (11) THE CHANGES MADE BY THE AMENDATORY ACT THAT ADDED THIS
3 SUBSECTION APPLY TO CASES PENDING IN THE TRIAL OR APPELLATE COURT
4 ON THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS
5 SUBSECTION AND CASES FILED ON OR AFTER THE EFFECTIVE DATE OF THE
6 AMENDATORY ACT THAT ADDED THIS SUBSECTION.