

# HOUSE BILL No. 4739

May 5, 2005, Introduced by Reps. Lipsey, Tobocman, Gaffney, Condino, Alma Smith, Gillard, Adamini, Whitmer, Stewart, Byrnes, Bieda, Dillon and McConico 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 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

1   disfigurement are questions of law for the court if the court finds  
2   either of the following:

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

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

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

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

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

24       (a) Intentionally caused harm to persons or property. Even  
25   though a person knows that harm to persons or property is  
26   substantially certain to be caused by his or her act or omission,  
27   the person does not cause or suffer that harm intentionally if he

1 or she acts or refrains from acting for the purpose of averting  
2 injury to any person, including himself or herself, or for the  
3 purpose of averting damage to tangible property.

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

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

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

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

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

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

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

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

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

13 (7) As used in this section, "serious impairment of body  
14 function" means an objectively manifested ~~impairment of~~ **INJURY**  
15 **INVOLVING** an important body function that, ~~affects the~~ **IN SOME**  
16 **WAY AND FOR SOME TIME, AFFECTED THE INJURED** person's ~~general~~  
17 ability to lead his or her normal life.