

# SENATE BILL No. 649

September 15, 2011, Introduced by Senators HUNE and SMITH and referred to the Committee on Insurance.

A bill to amend 1956 PA 218, entitled "The insurance code of 1956," by amending sections 3101, 3104, 3107, 3114, 3115, 3135, 3157, 3163, and 3172 (MCL 500.3101, 500.3104, 500.3107, 500.3114, 500.3115, 500.3135, 500.3157, 500.3163, and 500.3172), section 3101 as amended by 2008 PA 241, section 3104 as amended by 2002 PA 662, section 3107 as amended by 1991 PA 191, section 3114 as amended by 2002 PA 38, sections 3135 and 3163 as amended by 2002 PA 697, and section 3172 as amended by 1984 PA 426, and by adding sections 1245, 3107c, and 3178.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1        SEC. 1245. (1) AN INSURANCE PRODUCER AND AN AGENCY AND THEIR  
2        AUTHORIZED REPRESENTATIVES AND EMPLOYEES INVOLVED IN THE SALE OR  
3        PURCHASE OF PERSONAL PROTECTION INSURANCE BENEFITS UNDER SECTION

3107 ARE NOT LIABLE FOR DAMAGES ARISING FROM THE LOSS OR INADEQUACY OF PERSONAL PROTECTION INSURANCE BENEFITS AND DO NOT HAVE ANY OTHER LIABILITY FOR DAMAGES CAUSED BY, ARISING OUT OF, OR RELATED TO ANY ACTUAL OR ALLEGED ACT, ERROR, OR OMISSION CONCERNING THE CHOICE OF PERSONAL PROTECTION INSURANCE BENEFIT AMOUNTS UNDER SECTION 3107.

(2) AS USED IN THIS SECTION, "AGENCY" MEANS THAT TERM AS DEFINED IN SECTION 1243.

Sec. 3101. (1) The owner or registrant of a motor vehicle required to be registered in this state shall maintain security for payment of benefits under personal protection insurance ~~—IN AN~~ AMOUNT NOT LESS THAN THAT REQUIRED UNDER SECTION 3107(1)(A)(i) AND property protection insurance ~~—and~~ residual liability insurance ~~IN~~ AN AMOUNT NOT LESS THAN THAT REQUIRED UNDER SECTION 3009. Security shall only be required to be in effect during the period the motor vehicle is driven or moved upon a highway. Notwithstanding any other provision in this act, an insurer that has issued an automobile insurance policy on a motor vehicle that is not driven or moved upon a highway may allow the insured owner or registrant of the motor vehicle to delete a portion of the coverages under the policy and maintain the comprehensive coverage portion of the policy in effect.

(2) As used in this chapter:

(a) "Automobile insurance" means that term as defined in section 2102.

(b) "Highway" means that term as defined in section 20 of the Michigan vehicle code, 1949 PA 300, MCL 257.20.

(c) "Motorcycle" means a vehicle having a saddle or seat for

1 the use of the rider, designed to travel on not more than 3 wheels  
2 in contact with the ground, which is equipped with a motor that  
3 exceeds 50 cubic centimeters piston displacement. The wheels on any  
4 attachment to the vehicle shall not be considered as wheels in  
5 contact with the ground. Motorcycle does not include a moped, as  
6 defined in section 32b of the Michigan vehicle code, 1949 PA 300,  
7 MCL 257.32b. Motorcycle does not include an ORV.

8 (d) "Motorcycle accident" means a loss involving the  
9 ownership, operation, maintenance, or use of a motorcycle as a  
10 motorcycle, but not involving the ownership, operation,  
11 maintenance, or use of a motor vehicle as a motor vehicle.

12 (e) "Motor vehicle" means a vehicle, including a trailer,  
13 operated or designed for operation upon a public highway by power  
14 other than muscular power ~~which~~**THAT** has more than 2 wheels. Motor  
15 vehicle does not include a motorcycle or a moped, as defined in  
16 section 32b of the Michigan vehicle code, 1949 PA 300, MCL 257.32b.  
17 Motor vehicle does not include a farm tractor or other implement of  
18 husbandry ~~which~~**THAT** is not subject to the registration  
19 requirements of the Michigan vehicle code pursuant to section 216  
20 of the Michigan vehicle code, 1949 PA 300, MCL 257.216. Motor  
21 vehicle does not include an ORV.

22 (f) "Motor vehicle accident" means a loss involving the  
23 ownership, operation, maintenance, or use of a motor vehicle as a  
24 motor vehicle regardless of whether the accident also involves the  
25 ownership, operation, maintenance, or use of a motorcycle as a  
26 motorcycle.

27 (g) "ORV" means a motor-driven recreation vehicle designed for

1 off-road use and capable of cross-country travel without benefit of  
2 road or trail, on or immediately over land, snow, ice, marsh,  
3 swampland, or other natural terrain. ORV includes, but is not  
4 limited to, a multitrack or multiwheel drive vehicle, a motorcycle  
5 or related 2-wheel, 3-wheel, or 4-wheel vehicle, an amphibious  
6 machine, a ground effect air cushion vehicle, an ATV as defined in  
7 section 81101 of the natural resources and environmental protection  
8 act, 1994 PA 451, MCL 324.81101, or other means of transportation  
9 deriving motive power from a source other than muscle or wind. ORV  
10 does not include a vehicle described in this subdivision that is  
11 registered for use upon a public highway and has the security  
12 described in section 3101 or 3103 in effect.

13 (h) "Owner" means any of the following:

14 (i) A person renting a motor vehicle or having the use ~~thereof,~~  
15 **OF A MOTOR VEHICLE**, under a lease or otherwise, for a period that  
16 is greater than 30 days.

17 (ii) A person who holds the legal title to a vehicle, other  
18 than a person engaged in the business of leasing motor vehicles who  
19 is the lessor of a motor vehicle pursuant to a lease providing for  
20 the use of the motor vehicle by the lessee for a period that is  
21 greater than 30 days.

22 (iii) A person who has the immediate right of possession of a  
23 motor vehicle under an installment sale contract.

24 (i) "Registrant" does not include a person engaged in the  
25 business of leasing motor vehicles who is the lessor of a motor  
26 vehicle pursuant to a lease providing for the use of the motor  
27 vehicle by the lessee for a period that is greater than 30 days.

1           (3) Security may be provided under a policy issued by an  
2 insurer duly authorized to transact business in this state ~~which~~  
3 **THAT** affords insurance for the payment of benefits described in  
4 subsection (1). A policy of insurance represented or sold as  
5 providing security is considered to provide insurance for the  
6 payment of the benefits.

7           (4) Security required by subsection (1) may be provided by any  
8 other method approved by the secretary of state as affording  
9 security equivalent to that afforded by a policy of insurance, if  
10 proof of the security is filed and continuously maintained with the  
11 secretary of state throughout the period the motor vehicle is  
12 driven or moved upon a highway. The person filing the security has  
13 all the obligations and rights of an insurer under this chapter.  
14 When the context permits, "insurer" as used in this chapter,  
15 includes any person filing the security as provided in this  
16 section.

17           Sec. 3104. (1) An unincorporated, nonprofit association to be  
18 known as the catastrophic claims association ~~, hereinafter referred~~  
19 ~~to as the association,~~ is created. Each insurer engaged in writing  
20 insurance coverages that provide the security required by section  
21 3101(1) within this state, as a condition of its authority to  
22 transact insurance in this state, shall be a member of the  
23 association and shall be bound by the plan of operation of the  
24 association. Each insurer engaged in writing insurance coverages  
25 that provide the security required by section 3103(1) within this  
26 state, as a condition of its authority to transact insurance in  
27 this state, shall be considered a member of the association, but

only for purposes of premiums under subsection (7) (d). Except as expressly provided in this section, the association is not subject to any laws of this state with respect to insurers, but in all other respects the association is subject to the laws of this state to the extent that the association would be if it were an insurer organized and subsisting under chapter 50.

(2) ~~The~~ **ALL OF THE FOLLOWING APPLY TO THE AMOUNT OF ULTIMATE LOSS SUSTAINED UNDER PERSONAL PROTECTION INSURANCE COVERAGES:**

**(A) FOR LOSS OCCURRENCES ATTRIBUTABLE TO A MOTOR VEHICLE ACCIDENT FOR POLICIES ISSUED OR RENEWED BEFORE JULY 1, 2012, THE** association shall provide, **PAYABLE FROM THE MCCA ACCOUNT UNDER SUBSECTION (25) (A)**, and each member shall accept indemnification for 100% of the amount of ultimate loss sustained under personal protection insurance coverages in excess of the following amounts in each loss occurrence:

**(i)** ~~(a)~~ For a motor vehicle accident policy issued or renewed before July 1, 2002, \$250,000.00.

**(ii)** ~~(b)~~ For a motor vehicle accident policy issued or renewed during the period July 1, 2002 to June 30, 2003, \$300,000.00.

**(iii)** ~~(c)~~ For a motor vehicle accident policy issued or renewed during the period July 1, 2003 to June 30, 2004, \$325,000.00.

**(iv)** ~~(d)~~ For a motor vehicle accident policy issued or renewed during the period July 1, 2004 to June 30, 2005, \$350,000.00.

**(v)** ~~(e)~~ For a motor vehicle accident policy issued or renewed during the period July 1, 2005 to June 30, 2006, \$375,000.00.

**(vi)** ~~(f)~~ For a motor vehicle accident policy issued or renewed during the period July 1, 2006 to June 30, 2007, \$400,000.00.

(vii) ~~(g)~~ For a motor vehicle accident policy issued or renewed during the period July 1, 2007 to June 30, 2008, \$420,000.00.

(viii) ~~(h)~~ For a motor vehicle accident policy issued or renewed during the period July 1, 2008 to June 30, 2009, \$440,000.00.

(ix) ~~(i)~~ For a motor vehicle accident policy issued or renewed during the period July 1, 2009 to June 30, 2010, \$460,000.00.

(x) ~~(j)~~ For a motor vehicle accident policy issued or renewed during the period July 1, 2010 to June 30, 2011, \$480,000.00.

(xi) ~~(k)~~ For a motor vehicle accident policy issued or renewed during the period July 1, 2011 to June 30, ~~2013~~ 2012, \$500,000.00. ~~Beginning July 1, 2013, this \$500,000.00 amount shall be increased biennially on July 1 of each odd numbered year, for policies issued or renewed before July 1 of the following odd numbered year, by the lesser of 6% or the consumer price index, and rounded to the nearest \$5,000.00. This biennial adjustment shall be calculated by the association by January 1 of the year of its July 1 effective date.~~

(B) FOR LOSS OCCURRENCES ATTRIBUTABLE TO A MOTOR VEHICLE ACCIDENT FOR POLICIES ISSUED OR RENEWED ON OR AFTER JULY 1, 2012, EACH MEMBER SHALL RETAIN 100% OF THE AMOUNT OF ULTIMATE LOSS SUSTAINED UNDER PERSONAL PROTECTION INSURANCE COVERAGES UP TO \$500,000.00 IN EACH LOSS OCCURRENCE. FOR AN ULTIMATE LOSS OF \$500,000.00 TO \$1,000,000.00, THE ASSOCIATION SHALL PROVIDE, PAYABLE FROM THE EXCESS PIP ACCOUNT UNDER SUBSECTION (25) (B), AND EACH MEMBER SHALL ACCEPT, INDEMNIFICATION FOR 90% OF THE AMOUNT OF ULTIMATE LOSS SUSTAINED UNDER PERSONAL PROTECTION INSURANCE COVERAGES. FOR AN ULTIMATE LOSS IN EXCESS OF \$1,000,000.00, THE

1 ASSOCIATION SHALL PROVIDE, PAYABLE FROM THE EXCESS PIP ACCOUNT  
2 UNDER SUBSECTION (25) (B), AND EACH MEMBER SHALL ACCEPT,  
3 INDEMNIFICATION FOR 100% OF THE AMOUNT OF ULTIMATE LOSS SUSTAINED  
4 UNDER PERSONAL PROTECTION INSURANCE COVERAGES.

5 (3) An insurer may withdraw from the association only upon  
6 ceasing to write insurance that provides the security required by  
7 section 3101(1) in this state.

8 (4) An insurer whose membership in the association has been  
9 terminated by withdrawal shall continue to be bound by the plan of  
10 operation, and upon withdrawal ~~—~~all unpaid premiums that have been  
11 charged to the withdrawing member are payable as of the effective  
12 date of the withdrawal.

13 (5) An unsatisfied net liability to the association of an  
14 insolvent member shall be assumed by and apportioned among the  
15 remaining members of the association as provided in the plan of  
16 operation. The association has all rights allowed by law on behalf  
17 of the remaining members against the estate or funds of the  
18 insolvent member for ~~sums~~**MONEY** due **TO** the association.

19 (6) If a member has been merged or consolidated into another  
20 insurer or another insurer has reinsured a member's entire business  
21 that provides the security required by section 3101(1) in this  
22 state, the member and successors in interest of the member remain  
23 liable for the member's obligations.

24 (7) The association shall do all of the following on behalf of  
25 the members of the association:

26 (a) Assume ~~100% of all~~ liability as provided in subsection  
27 (2).



1 (b) Establish procedures by which members shall promptly  
2 report to the association each claim that, on the basis of the  
3 injuries or damages sustained, may reasonably be anticipated to  
4 involve the association if the member is ultimately held legally  
5 liable for the injuries or damages. Solely for the purpose of  
6 reporting claims, the member shall in all instances consider itself  
7 legally liable for the injuries or damages. The member shall also  
8 advise the association of subsequent developments likely to  
9 materially affect the interest of the association in the claim.

10 (c) Maintain relevant loss and expense data relative to all  
11 liabilities of the association and require each member to furnish  
12 statistics, in connection with liabilities of the association, at  
13 the times and in the form and detail as may be required by the plan  
14 of operation.

15 (d) In a manner provided for in the plan of operation,  
16 calculate and charge to members of the association a ~~total~~ premium  
17 **FOR THE MCCA ACCOUNT UNDER SUBSECTION (25) (A) AND A PREMIUM FOR THE**  
18 **EXCESS PIP ACCOUNT UNDER SUBSECTION (25) (B). EACH PREMIUM SHALL BE**  
19 sufficient to cover the expected losses and expenses of the  
20 association that the association will likely incur during the  
21 period for which the premium is applicable **FOR EACH ACCOUNT.** The  
22 **EACH** premium shall include an amount to cover incurred but not  
23 reported losses for the period and may be adjusted for any excess  
24 or deficient premiums from previous periods. Excesses or  
25 deficiencies from previous periods may be fully adjusted in a  
26 single period or may be adjusted over several periods in a manner  
27 provided for in the plan of operation. Each member shall be charged

1 an amount equal to that member's total written car years of  
2 insurance providing the security required by section 3101(1) or  
3 3103(1), or both, written in this state during the period to which  
4 the premium applies, multiplied by the average premium per car. **THE**  
5 **PREMIUM FOR THE EXCESS PIP ACCOUNT SHALL BE ADJUSTED TO REFLECT THE**  
6 **AMOUNT OF COVERAGE SELECTED BY EACH MEMBER'S INSURED UNDER SECTION**  
7 **3107.** The average premium per car shall be the total premium  
8 calculated divided by the total written car years of insurance  
9 providing the security required by section 3101(1) or 3103(1)  
10 written in this state of all members during the period to which the  
11 premium applies. A member shall be charged a premium for a historic  
12 vehicle that is insured with the member of 20% of the premium  
13 charged for a car insured with the member. As used in this  
14 subdivision:

15 (i) "Car" includes a motorcycle but does not include a historic  
16 vehicle.

17 (ii) "Historic vehicle" means a vehicle that is a registered  
18 historic vehicle under section 803a or 803p of the Michigan vehicle  
19 code, 1949 PA 300, MCL 257.803a and 257.803p.

20 (e) Require and accept the payment of premiums from members of  
21 the association as provided for in the plan of operation. The  
22 association shall do either of the following:

23 (i) Require payment of the premium in full within 45 days after  
24 the premium charge.

25 (ii) Require payment of the premiums to be made periodically to  
26 cover the actual cash obligations of the association.

27 (f) Receive and distribute all ~~sums~~-**MONEY** required by the

1 operation of the association.

2 (g) Establish procedures for reviewing claims procedures and  
3 practices of members of the association. If the claims procedures  
4 or practices of a member are considered inadequate to properly  
5 service the liabilities of the association, the association may  
6 undertake or may contract with another person, including another  
7 member, to adjust or assist in the adjustment of claims for the  
8 member on claims that create a potential liability to the  
9 association and may charge the cost of the adjustment to the  
10 member.

11 (8) In addition to other powers granted to it by this section,  
12 the association may do all of the following:

13 (a) Sue and be sued in the name of the association. A judgment  
14 against the association shall not create any direct liability  
15 against the individual members of the association. The association  
16 may provide for the indemnification of its members, members of the  
17 board of directors of the association, and officers, employees, and  
18 other persons lawfully acting on behalf of the association.

19 (b) Reinsure all or any portion of its potential liability  
20 with reinsurers licensed to transact insurance in this state or  
21 approved by the commissioner.

22 (c) Provide for appropriate housing, equipment, and personnel  
23 as may be necessary to assure the efficient operation of the  
24 association.

25 (d) Pursuant to the plan of operation, adopt reasonable rules  
26 for the administration of the association, enforce those rules, and  
27 delegate authority, as the board considers necessary to assure the

1 proper administration and operation of the association consistent  
2 with the plan of operation.

3 (e) Contract for goods and services, including independent  
4 claims management, actuarial, investment, and legal services, from  
5 others within or without this state to assure the efficient  
6 operation of the association.

7 (f) Hear and determine complaints of a company or other  
8 interested party concerning the operation of the association.

9 (g) Perform other acts not specifically enumerated in this  
10 section that are necessary or proper to accomplish the purposes of  
11 the association and that are not inconsistent with this section or  
12 the plan of operation.

13 (9) A board of directors is created ~~, hereinafter referred to~~  
14 ~~as the board, which shall be~~ **THAT IS** responsible for the operation  
15 of the association consistent with the plan of operation and this  
16 section.

17 (10) The plan of operation shall provide for all of the  
18 following:

19 (a) The establishment of necessary facilities.

20 (b) The management and operation of the association.

21 (c) Procedures to be utilized in charging premiums, including  
22 adjustments from excess or deficient premiums from prior periods.

23 (d) Procedures governing the actual payment of premiums to the  
24 association.

25 (e) Reimbursement of each member of the board by the  
26 association for actual and necessary expenses incurred on  
27 association business.

1 (f) The investment policy of the association.

2 (g) Any other matters required by or necessary to effectively  
3 implement this section.

4 (11) Each board shall include members that would contribute a  
5 total of not less than 40% of the total ~~premium~~**PREMIUMS** calculated  
6 pursuant to subsection (7)(d). Each director ~~shall be~~**IS** entitled  
7 to 1 vote. The initial term of office of a director ~~shall be~~**IS** 2  
8 years.

9 (12) As part of the plan of operation, the board shall adopt  
10 rules providing for the composition and term of successor boards to  
11 the initial board, consistent with the membership composition  
12 requirements in subsections (11) and (13). Terms of the directors  
13 shall be staggered so that the terms of all the directors do not  
14 expire at the same time and so that a director does not serve a  
15 term of more than 4 years.

16 (13) The board shall consist of 5 directors, and the  
17 commissioner shall be an ex officio member of the board without  
18 vote.

19 (14) Each director shall be appointed by the commissioner and  
20 shall serve until that member's successor is selected and  
21 qualified. The chairperson of the board shall be elected by the  
22 board. A vacancy on the board shall be filled by the commissioner  
23 consistent with the plan of operation.

24 (15) After the board is appointed, the board shall meet as  
25 often as the chairperson, the commissioner, or the plan of  
26 operation shall require, or at the request of any 3 members of the  
27 board. The chairperson shall retain the right to vote on all

1 issues. Four members of the board constitute a quorum.

2 (16) An annual report of the operations of the association in  
3 a form and detail as ~~may be~~ determined by the board shall be  
4 furnished to each member.

5 (17) Not more than 60 days after the initial organizational  
6 meeting of the board, the board shall submit to the commissioner  
7 for approval a proposed plan of operation consistent with the  
8 objectives and provisions of this section, which shall provide for  
9 the economical, fair, and nondiscriminatory administration of the  
10 association and for the prompt and efficient provision of  
11 indemnity. If a plan is not submitted within this 60-day period,  
12 then the commissioner, after consultation with the board, shall  
13 formulate and place into effect a plan consistent with this  
14 section.

15 (18) The plan of operation, unless approved sooner in writing,  
16 shall be considered to meet the requirements of this section if it  
17 is not disapproved by written order of the commissioner within 30  
18 days after the date of its submission. Before disapproval of all or  
19 any part of the proposed plan of operation, the commissioner shall  
20 notify the board in what respect the plan of operation fails to  
21 meet the requirements and objectives of this section. If the board  
22 fails to submit a revised plan of operation that meets the  
23 requirements and objectives of this section within the 30-day  
24 period, the commissioner shall enter an order accordingly and shall  
25 immediately formulate and place into effect a plan consistent with  
26 the requirements and objectives of this section.

27 (19) The proposed plan of operation or amendments to the plan

1 of operation are subject to majority approval by the board,  
2 ratified by a majority of the membership having a vote, with voting  
3 rights being apportioned according to the premiums charged in  
4 subsection (7)(d), and are subject to approval by the commissioner.

5 (20) Upon approval by the commissioner and ratification by the  
6 members of the plan submitted, or upon the promulgation of a plan  
7 by the commissioner, each insurer authorized to write insurance  
8 providing the security required by section 3101(1) in this state,  
9 as provided in this section, is bound by and shall formally  
10 subscribe to and participate in the plan approved as a condition of  
11 maintaining its authority to transact insurance in this state.

12 (21) The association is subject to all the reporting, loss  
13 reserve, and investment requirements of the commissioner to the  
14 same extent as ~~would~~ **IS** a member of the association.

15 (22) Premiums charged members by the association shall be  
16 recognized in the rate-making procedures for insurance rates in the  
17 same manner that expenses and premium taxes are recognized.

18 (23) The commissioner or an authorized representative of the  
19 commissioner may visit the association at any time and examine any  
20 and all the association's affairs.

21 (24) The association does not have liability for losses  
22 occurring before July 1, 1978.

23 **(25) THE ASSOCIATION SHALL MAINTAIN THE FOLLOWING 2 SEPARATE**  
24 **ACCOUNTS OUT OF WHICH MEMBERS SHALL BE INDEMNIFIED FOR ULTIMATE**  
25 **LOSS:**

26 **(A) AN MCCA ACCOUNT TO INDEMNIFY FOR LOSS OCCURRENCES**  
27 **ATTRIBUTABLE TO A MOTOR VEHICLE ACCIDENT THAT OCCURS BEFORE JULY 1,**

1 2012.

2 (B) AN EXCESS PIP ACCOUNT TO INDEMNIFY FOR LOSS OCCURRENCES  
3 ATTRIBUTABLE TO A MOTOR VEHICLE ACCIDENT THAT OCCURS ON OR AFTER  
4 JULY 1, 2012.

5 (26) EACH ACCOUNT UNDER SUBSECTION (25) SHALL BE SELF-  
6 SUPPORTING, AND ASSETS OR LIABILITIES SHALL NOT BE TRANSFERRED  
7 BETWEEN THE ACCOUNTS.

8 (27) ~~(25)~~ As used in this section:

9 ~~—— (a) "Consumer price index" means the percentage of change in~~  
10 ~~the consumer price index for all urban consumers in the United~~  
11 ~~States city average for all items for the 24 months prior to~~  
12 ~~October 1 of the year prior to the July 1 effective date of the~~  
13 ~~biennial adjustment under subsection (2) (k) as reported by the~~  
14 ~~United States department of labor, bureau of labor statistics, and~~  
15 ~~as certified by the commissioner.~~

16 (A) "ASSOCIATION" MEANS THE CATASTROPHIC CLAIMS ASSOCIATION  
17 CREATED IN SUBSECTION (1).

18 (B) "BOARD" MEANS THE BOARD OF DIRECTORS CREATED IN SUBSECTION  
19 (9).

20 (C) ~~(b)~~ "Motor vehicle accident policy" means a policy  
21 providing the coverages required under section 3101(1).

22 (D) ~~(e)~~ "Ultimate loss" means the actual loss amounts that a  
23 member is obligated to pay and that are paid or payable by the  
24 member, and ~~do~~ **DOES** not include claim expenses. An ultimate loss is  
25 incurred by the association on the date that the loss occurs.

26 Sec. 3107. (1) ~~Except as provided in subsection (2), personal~~  
27 **PERSONAL** protection insurance benefits are payable for the



1 following:

2 (a) Allowable expenses ~~consisting of all reasonable charges AS~~  
3 **PROVIDED IN SUBPARAGRAPH (i), (ii), (iii), OR (iv)** incurred for  
4 reasonably necessary products, services, and accommodations for an  
5 injured person's care, recovery, or rehabilitation. ~~Allowable~~  
6 ~~expenses within personal protection insurance coverage shall not~~  
7 ~~include charges for a hospital room in excess of a reasonable and~~  
8 ~~customary charge for semiprivate accommodations except if the~~  
9 ~~injured person requires special or intensive care, or for funeral~~  
10 ~~and burial expenses in the amount set forth in the policy which~~  
11 ~~shall not be less than \$1,750.00 or more than \$5,000.00. ANY CHANGE~~  
12 **IN A LIMIT SELECTED UNDER SUBPARAGRAPH (i), (ii), (iii), OR (iv)**  
13 **APPLIES ONLY TO BENEFITS PAYABLE FOR AN ACCIDENT THAT OCCURS ON OR**  
14 **AFTER THE DATE OF THE CHANGE IN THE LIMIT. AN INSURER SHALL PROVIDE**  
15 **THE FOLLOWING COVERAGES, AND AN INSURED SHALL SELECT 1 OF THE**  
16 **FOLLOWING COVERAGES, WHICH SHALL APPLY TO THE INSURED NAMED IN THE**  
17 **POLICY, THE INSURED'S SPOUSE, AND ANY RELATIVE OF EITHER DOMICILED**  
18 **IN THE SAME HOUSEHOLD:**

19 (i) COVERAGE FOR ALLOWABLE EXPENSES CONSISTING OF ALL  
20 REASONABLE CHARGES INCURRED UP TO A MAXIMUM OF \$250,000.00 FOR  
21 REASONABLY NECESSARY PRODUCTS, SERVICES, AND ACCOMMODATIONS FOR AN  
22 INJURED PERSON'S CARE, RECOVERY, OR REHABILITATION.

23 (ii) COVERAGE FOR ALLOWABLE EXPENSES CONSISTING OF ALL  
24 REASONABLE CHARGES INCURRED UP TO A MAXIMUM OF \$500,000.00 FOR  
25 REASONABLY NECESSARY PRODUCTS, SERVICES, AND ACCOMMODATIONS FOR AN  
26 INJURED PERSON'S CARE, RECOVERY, OR REHABILITATION.

27 (iii) COVERAGE FOR ALLOWABLE EXPENSES CONSISTING OF ALL

1 REASONABLE CHARGES INCURRED UP TO A MAXIMUM OF \$1,000,000.00 FOR  
2 REASONABLY NECESSARY PRODUCTS, SERVICES, AND ACCOMMODATIONS FOR AN  
3 INJURED PERSON'S CARE, RECOVERY, OR REHABILITATION.

4 (iv) COVERAGE FOR ALLOWABLE EXPENSES CONSISTING OF ALL  
5 REASONABLE CHARGES INCURRED UP TO A MAXIMUM OF \$5,000,000.00 FOR  
6 REASONABLY NECESSARY PRODUCTS, SERVICES, AND ACCOMMODATIONS FOR AN  
7 INJURED PERSON'S CARE, RECOVERY, OR REHABILITATION.

8 (b) ~~Work~~—EXCEPT AS PROVIDED IN SUBSECTION (2), WORK loss  
9 consisting of loss of income from work an injured person would have  
10 performed during the first 3 years after the date of the accident  
11 if he or she had not been injured. Work loss does not include any  
12 loss after the date on which the injured person dies. Because the  
13 benefits received from personal protection insurance for loss of  
14 income are not taxable income, the benefits payable for such loss  
15 of income shall be reduced 15% unless the claimant presents to the  
16 insurer in support of his or her claim reasonable proof of a lower  
17 value of the income tax advantage in his or her case, in which case  
18 the lower value shall apply. Beginning March 30, 1973, the benefits  
19 payable for work loss sustained in a single 30-day period and the  
20 income earned by an injured person for work during the same period  
21 together shall not exceed \$1,000.00, which maximum shall apply pro  
22 rata to any lesser period of work loss. Beginning October 1, 1974,  
23 the maximum shall be adjusted annually to reflect changes in the  
24 cost of living under rules prescribed by the commissioner but any  
25 change in the maximum shall apply only to benefits arising out of  
26 accidents occurring subsequent to the date of change in the  
27 maximum.

1 (c) Expenses not exceeding \$20.00 per day, reasonably incurred  
2 in obtaining ordinary and necessary services in lieu of those that,  
3 if he or she had not been injured, an injured person would have  
4 performed during the first 3 years after the date of the accident,  
5 not for income but for the benefit of himself or herself or of his  
6 or her dependent.

7 (2) 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 (3) THE FOLLOWING APPLY TO SUBSECTION (1) (A) :

17 (A) IF AN INSURED FAILS TO SELECT 1 OF THE PERSONAL PROTECTION  
18 COVERAGE LIMITS, AN INSURER SHALL PROVIDE COVERAGE IN THE AMOUNT  
19 SET FORTH IN SUBSECTION (1) (A) (i) .

20 (B) THE SAME PERSONAL PROTECTION COVERAGE LIMITS APPLY TO ALL  
21 MOTOR VEHICLES INSURED UNDER THE SAME POLICY.

22 (C) COVERAGE LIMITS ARE PROVIDED ON A PER INDIVIDUAL PER LOSS  
23 OCCURRENCE BASIS. COVERAGE APPLIES ONLY TO BENEFITS PAYABLE TO THE  
24 INSURED NAMED IN THE POLICY, THE INSURED'S SPOUSE, AND ANY RELATIVE  
25 OF EITHER DOMICILED IN THE SAME HOUSEHOLD.

26 (D) A PERSON WHO IS NOT AN INSURED NAMED IN A POLICY, NOT THE  
27 INSURED'S SPOUSE, AND NOT A RELATIVE OF EITHER DOMICILED IN THE

1 SAME HOUSEHOLD IS ENTITLED ONLY TO COVERAGE IN THE LIMIT SET FORTH  
2 IN SUBSECTION (1) (A) (i) . PERSONAL PROTECTION INSURANCE BENEFITS  
3 PAYABLE UNDER THIS SUBDIVISION ARE NOT PAYABLE TO THE EXTENT THAT  
4 THE BENEFITS COVERING THE SAME LOSS ARE AVAILABLE FROM OTHER  
5 SOURCES, REGARDLESS OF THE NATURE AND NUMBER OF BENEFIT SOURCES  
6 AVAILABLE AND REGARDLESS OF THE NATURE OR FORM OF THE BENEFITS.

7 (E) REGARDLESS OF THE NUMBER OF MOTOR VEHICLES INSURED OR  
8 INSURERS PROVIDING SECURITY IN ACCORDANCE WITH THIS CHAPTER, OR THE  
9 PROVISIONS OF ANY OTHER LAW PROVIDING FOR DIRECT BENEFITS WITHOUT  
10 REGARD TO FAULT FOR MOTOR OR ANY OTHER VEHICLE ACCIDENTS, A PERSON  
11 SHALL NOT RECOVER DUPLICATE BENEFITS FOR THE SAME EXPENSES OR  
12 LOSSES INCURRED.

13 (F) IF ELIGIBLE UNDER SECTION 3163, PERSONAL PROTECTION  
14 INSURANCE BENEFITS ARE LIMITED TO THE LIMIT SET FORTH IN SECTION  
15 3163 FOR ACCIDENTS OCCURRING IN THIS STATE IF THE INJURED PERSON IS  
16 A NONRESIDENT OF THIS STATE AND THE INJURED PERSON'S BENEFITS ARE  
17 PAYABLE UNDER A POLICY DELIVERED OUTSIDE OF THIS STATE.

18 (G) PERSONAL PROTECTION INSURANCE BENEFITS ARE NOT PAYABLE TO  
19 A NONRESIDENT INJURED IN AN ACCIDENT OCCURRING OUTSIDE OF THIS  
20 STATE TO THE EXTENT THAT BENEFITS COVERING THE SAME LOSS ARE  
21 AVAILABLE FROM OTHER SOURCES, REGARDLESS OF THE NATURE AND NUMBER  
22 OF BENEFIT SOURCES AVAILABLE AND REGARDLESS OF THE NATURE OR FORM  
23 OF THE BENEFITS. IF PERSONAL PROTECTION INSURANCE BENEFITS ARE  
24 PAYABLE TO A NONRESIDENT UNDER THIS SUBDIVISION, THE BENEFITS ARE  
25 LIMITED TO THE LIMIT SET FORTH IN SUBSECTION (1) (A) (i) PER  
26 INDIVIDUAL PER LOSS OCCURRENCE.

27 SEC. 3107C. (1) ALLOWABLE EXPENSES UNDER SECTION 3107(1) (A) DO

1 NOT INCLUDE CHARGES FOR A HOSPITAL ROOM IN EXCESS OF A REASONABLE  
2 AND CUSTOMARY CHARGE FOR SEMIPRIVATE ACCOMMODATIONS, UNLESS THE  
3 INJURED PERSON REQUIRES SPECIAL OR INTENSIVE CARE, OR CHARGES FOR  
4 FUNERAL AND BURIAL EXPENSES IN EXCESS OF THE AMOUNT SET FORTH IN  
5 THE POLICY, WHICH SHALL NOT BE LESS THAN \$1,750.00 OR MORE THAN  
6 \$5,000.00.

7 (2) ALL OF THE FOLLOWING APPLY TO ALLOWABLE EXPENSES UNDER  
8 SECTION 3107(1) (A) FOR ATTENDANT CARE OR NURSING SERVICES PROVIDED  
9 IN THE INJURED PERSON'S HOME:

10 (A) PAYMENT IS LIMITED TO A TOTAL OF 56 HOURS PER WEEK FOR  
11 SERVICES PERFORMED BY 1 OR MORE INDIVIDUALS WHO ARE NOT CERTIFIED,  
12 REGISTERED, OR LICENSED TO RENDER THE ATTENDANT CARE OR NURSING  
13 SERVICES UNDER ARTICLE 15 OF THE PUBLIC HEALTH CODE, 1978 PA 368,  
14 MCL 333.16101 TO 333.18838.

15 (B) PAYMENT FOR SERVICES PERFORMED BY AN INDIVIDUAL WHO IS NOT  
16 CERTIFIED, REGISTERED, OR LICENSED TO RENDER THE ATTENDANT CARE OR  
17 NURSING SERVICES UNDER ARTICLE 15 OF THE PUBLIC HEALTH CODE, 1978  
18 PA 368, MCL 333.16101 TO 333.18838, SHALL BE \$11.00 PER HOUR FOR  
19 BASIC CARE OR \$17.00 PER HOUR FOR SKILLED CARE. BEGINNING JANUARY  
20 1, 2013, THE AMOUNTS IN THIS SUBDIVISION SHALL BE ADJUSTED ANNUALLY  
21 TO REFLECT CHANGES IN THE COST OF LIVING UNDER RULES PRESCRIBED BY  
22 THE COMMISSIONER IN THE SAME MANNER AS THE MAXIMUM UNDER SECTION  
23 3107(1) (B) IS ADJUSTED. ANY CHANGES IN THE AMOUNTS APPLY ONLY TO  
24 SERVICES RENDERED AFTER THE EFFECTIVE DATE OF THE CHANGES.

25 (3) AS USED IN THIS SECTION:

26 (A) "BASIC CARE" MEANS ANY OF THE FOLLOWING:

27 (i) PROVIDING PERSONAL CARE SERVICES, INCLUDING, BUT NOT

1 LIMITED TO, BATHING, SHAMPOOING, SKIN CARE, ORAL HYGIENE, SHAVING  
2 MALE PATIENTS, CATHETER CARE, AND TOILETING ASSISTANCE, INCLUDING  
3 URINAL AND BEDPAN ASSISTANCE.

4 (ii) MEASURING AND DOCUMENTING VITAL SIGNS.

5 (iii) PROVIDING OR ASSISTING WITH EXERCISE, AMBULATION, OR  
6 POSITIONING AS DIRECTED BY A NURSE OR THERAPIST, INCLUDING  
7 AMBULATION WITH OR WITHOUT ASSISTIVE DEVICES, BASIC RANGE OF MOTION  
8 BOTH PASSIVE AND ACTIVE, LIGHT PIVOT TRANSFERS, AND ASSISTING FROM  
9 BED, CHAIR, OR COMMODE.

10 (iv) PROVIDING ENVIRONMENTAL AND HOMEMAKING SERVICES, INCLUDING  
11 BED-MAKING WHETHER OCCUPIED OR UNOCCUPIED, LIGHT HOUSEKEEPING TO  
12 MAINTAIN A HEALTHY ENVIRONMENT, LAUNDERING OF BEDDING AND CLOTHING,  
13 SHOPPING FOR GROCERIES, AND TRANSPORTATION AS NECESSARY.

14 (v) ASSISTING WITH SELF-ADMINISTERED MEDICATIONS.

15 (B) "SKILLED CARE" MEANS PROVIDING BASIC CARE SERVICES AND ANY  
16 OF THE FOLLOWING:

17 (i) PERFORMING INTERMITTENT STRAIGHT CATHETERIZATION, CATHETER  
18 PERINEAL CARE, AND COLOSTOMY CARE AS DIRECTED.

19 (ii) PERFORMING A BOWEL PROGRAM UNDER THE DIRECTION OF A  
20 REGISTERED NURSE.

21 (iii) PERFORMING TUBE FEEDINGS AND SIMPLE WOUND CARE UNDER THE  
22 DIRECTION OF A REGISTERED NURSE.

23 (iv) PERFORMING FULL 1-PERSON TRANSFERS AND TRANSFERS USING A  
24 PATIENT LIFT OR HOIST.

25 Sec. 3114. (1) Except as provided in subsections (2), (3), and  
26 (5), a personal protection insurance policy described in section  
27 3101(1) applies to accidental bodily injury to the person named in

1 the policy, the person's spouse, and a relative of either domiciled  
2 in the same household, if the injury arises from a motor vehicle  
3 accident. A personal injury insurance policy described in section  
4 3103(2) applies to accidental bodily injury to the person named in  
5 the policy, the person's spouse, and a relative of either domiciled  
6 in the same household, if the injury arises from a motorcycle  
7 accident. When personal protection insurance benefits **DESCRIBED IN**  
8 **SECTION 3107(1)**, or personal injury benefits described in section  
9 3103(2), are payable to or for the benefit of an injured person  
10 under his or her own policy and would also be payable under the  
11 policy of his or her spouse, relative, or relative's spouse, the  
12 injured person's insurer shall pay all of the benefits and is not  
13 entitled to recoupment from the other insurer. **THE COVERAGE FOR**  
14 **ALLOWABLE EXPENSES FOR 2 OR MORE MOTOR VEHICLES UNDER 1 POLICY OR**  
15 **FOR 2 OR MORE POLICIES SHALL NOT BE ADDED TOGETHER, COMBINED, OR**  
16 **STACKED TO DETERMINE THE LIMIT OF INSURANCE COVERAGE AVAILABLE FOR**  
17 **EACH INJURED PERSON COVERED UNDER THE POLICY.**

18 (2) A person suffering accidental bodily injury while an  
19 operator or a passenger of a motor vehicle operated in the business  
20 of transporting passengers shall receive the personal protection  
21 insurance benefits to which the person is entitled from the insurer  
22 of the motor vehicle. This subsection does not apply to a passenger  
23 in the following, unless that passenger is not entitled to personal  
24 protection insurance benefits under any other policy:

25 (a) A school bus, as defined by the department of education,  
26 providing transportation not prohibited by law.

27 (b) A bus operated by a common carrier of passengers certified

1 by the department of transportation.

2 (c) A bus operating under a government sponsored  
3 transportation program.

4 (d) A bus operated by or providing service to a nonprofit  
5 organization.

6 (e) A taxicab insured as prescribed in section 3101 or 3102.

7 (f) A bus operated by a canoe or other watercraft, bicycle, or  
8 horse livery used only to transport passengers to or from a  
9 destination point.

10 (3) An employee, his or her spouse, or a relative of either  
11 domiciled in the same household ~~—~~who suffers accidental bodily  
12 injury while an occupant of a motor vehicle owned or registered by  
13 the employer ~~—~~shall receive personal protection insurance benefits  
14 to which the employee is entitled ~~from~~ **IN THE FOLLOWING ORDER OF**  
15 **PRIORITY:**

16 (A) **FROM** the insurer of the furnished vehicle.

17 (B) **FROM HIS OR HER OWN POLICY, FROM HIS OR HER SPOUSE'S**  
18 **POLICY, OR FROM THE POLICY OF A RELATIVE OF EITHER THE PERSON OR**  
19 **HIS OR HER SPOUSE DOMICILED IN THE SAME HOUSEHOLD.**

20 (4) Except as provided in subsections (1) to (3), a person  
21 suffering accidental bodily injury arising from a motor vehicle  
22 accident while an occupant of a motor vehicle shall claim personal  
23 protection insurance benefits from insurers in the following order  
24 of priority:

25 (a) The insurer of the owner or registrant of the vehicle  
26 occupied.

27 (b) The insurer of the operator of the vehicle occupied.



(5) A person suffering accidental bodily injury arising from a motor vehicle accident which shows evidence of the involvement of a motor vehicle while an operator or passenger of a motorcycle shall claim personal protection insurance benefits from insurers in the following order of priority:

(a) The insurer of the owner or registrant of the motor vehicle involved in the accident.

(b) The insurer of the operator of the motor vehicle involved in the accident.

(c) The motor vehicle insurer of the operator of the motorcycle involved in the accident.

(d) The motor vehicle insurer of the owner or registrant of the motorcycle involved in the accident.

**(6) AN INJURED PERSON CLAIMING PERSONAL PROTECTION INSURANCE BENEFITS UNDER SUBSECTION (5) IS LIMITED TO REASONABLE CHARGES INCURRED UP TO A MAXIMUM OF \$250,000.00 FOR REASONABLE NECESSARY PRODUCTS, SERVICES, AND ACCOMMODATIONS FOR HIS OR HER CARE, RECOVERY, OR REHABILITATION.**

(7) ~~(6)~~ If 2 or more insurers are in the same order of priority to provide personal protection insurance benefits, ~~under subsection (5),~~ an insurer paying benefits due is entitled to partial recoupment from the other insurers in the same order of priority, together with a reasonable amount of partial recoupment of the expense of processing the claim, in order to accomplish equitable distribution of the loss among all of the insurers.

Sec. 3115. (1) Except as provided in ~~subsection (1) of section 3114~~ **3114(1)**, a person suffering accidental bodily injury while not

1 an occupant of a motor vehicle shall claim personal protection  
2 insurance benefits from insurers in the following order of  
3 priority:

4 (a) Insurers of owners or registrants of motor vehicles  
5 involved in the accident.

6 (b) Insurers of operators of motor vehicles involved in the  
7 accident.

8 (2) ~~When~~ **THE FOLLOWING APPLY IF** 2 or more insurers are in the  
9 same order of priority to provide personal protection insurance  
10 benefits:

11 **(A) IF THE COVERAGES FOR ALLOWABLE EXPENSES IN THE POLICIES**  
12 **ARE THE SAME,** an insurer paying benefits due is entitled to partial  
13 recoupment from the other insurers in the same order of priority,  
14 together with a reasonable amount of partial recoupment of the  
15 expense of processing the claim, in order to accomplish equitable  
16 distribution of the loss among such insurers.

17 **(B) IF THE COVERAGES FOR ALLOWABLE EXPENSES IN THE POLICIES**  
18 **ARE NOT THE SAME, EACH INSURER SHALL PAY THE RATIO OF ITS LIMIT OF**  
19 **ALLOWABLE EXPENSE COVERAGE TO THE TOTAL ALLOWABLE EXPENSE COVERAGE**  
20 **AVAILABLE UNDER ALL OF THE POLICIES.**

21 (3) A limit upon the amount of personal protection insurance  
22 benefits available because of accidental bodily injury to 1 person  
23 arising from 1 motor vehicle accident shall be determined without  
24 regard to the number of policies applicable to the accident.

25 **(4) THE LIMIT OF PERSONAL PROTECTION INSURANCE BENEFITS**  
26 **AVAILABLE FOR 2 OR MORE MOTOR VEHICLES UNDER 1 POLICY OR FOR 2 OR**  
27 **MORE POLICIES SHALL NOT BE ADDED TOGETHER, COMBINED, OR STACKED TO**

1 **DETERMINE THE LIMIT OF INSURANCE COVERAGE AVAILABLE FOR EACH**  
2 **INJURED PERSON COVERED UNDER THE POLICY.**

3       Sec. 3135. (1) A person remains subject to tort liability for  
4 noneconomic loss caused by his or her ownership, maintenance, or  
5 use of a motor vehicle only if the injured person has suffered  
6 death, serious impairment of body function, or permanent serious  
7 disfigurement.

8       (2) ~~For~~ **EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, FOR** a  
9 cause of action for damages pursuant to subsection (1) filed on or  
10 after July 26, 1996, all of the following apply:

11       (a) The issues of whether an injured person has suffered  
12 serious impairment of body function or permanent serious  
13 disfigurement are questions of law for the court if the court finds  
14 either of the following:

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

17       (ii) There is a factual dispute concerning the nature and  
18 extent of the person's injuries, but the dispute is not material to  
19 the determination as to whether the person has suffered a serious  
20 impairment of body function or permanent serious disfigurement.

21 ~~However, for a closed head injury, a question of fact for the jury~~  
22 ~~is created if a licensed allopathic or osteopathic physician who~~  
23 ~~regularly diagnoses or treats closed head injuries testifies under~~  
24 ~~oath that there may be a serious neurological injury.~~

25       (b) 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.

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

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

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

(b) Damages for noneconomic loss as provided and limited in subsections (1), ~~and (2)~~, **AND (7) TO (13)**.

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

(d) Damages for economic loss ~~by~~ **IN EXCESS OF THE PERSONAL PROTECTION INSURANCE BENEFITS PROVIDED UNDER SECTION 3107 OR, FOR a** nonresident, in excess of the personal protection insurance

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

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

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

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

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

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

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

26 (7) As used in this section, "serious impairment of body  
27 function" means an objectively manifested ~~impairment of~~ **INJURY THAT**

1 IMPAIRS OR IMPAIRED an important body function AND that affects OR  
2 AFFECTED the person's general ability to lead his or her normal  
3 life. ALL OF THE FOLLOWING APPLY TO SERIOUS IMPAIRMENT OF BODY  
4 FUNCTION:

5 (A) TO ESTABLISH A SERIOUS IMPAIRMENT OF BODY FUNCTION, THE  
6 INJURED PERSON MUST SATISFY BOTH OF THE FOLLOWING:

7 (i) IN ORDER FOR AN INJURY TO BE OBJECTIVELY MANIFESTED, THERE  
8 MUST BE, OR MUST HAVE BEEN, A MEDICALLY IDENTIFIABLE INJURY OR  
9 CONDITION THAT HAS A PHYSICAL BASIS.

10 (ii) THE INJURY AND IMPAIRMENT MUST HAVE, OR MUST HAVE HAD, A  
11 MEANINGFUL EFFECT ON THE PERSON'S GENERAL ABILITY AND CAPACITY TO  
12 LEAD HIS OR HER NORMAL LIFE.

13 (B) A PERSON ASSERTING THAT HE OR SHE SUFFERED A SERIOUS  
14 IMPAIRMENT OF BODY FUNCTION IS NOT REQUIRED TO PROVE THAT THE  
15 INJURY AND IMPAIRMENT WERE PERMANENT, WERE EXTENSIVE, LASTED FOR A  
16 SIGNIFICANT PERIOD OF TIME, OR ALTERED THE COURSE AND TRAJECTORY OF  
17 THE PERSON'S ENTIRE NORMAL LIFE, IF THERE IS PROOF THAT THE INJURY  
18 AND IMPAIRMENT OTHERWISE SATISFY THE REQUIREMENTS OF THIS  
19 SUBSECTION.

20 (8) A PERSON HAS SUFFERED A SERIOUS IMPAIRMENT OF BODY  
21 FUNCTION AS A MATTER OF LAW IF THERE IS NO MATERIAL FACTUAL DISPUTE  
22 THAT THE PERSON SUSTAINED ANY OF THE FOLLOWING INJURIES AS A RESULT  
23 OF THE ACCIDENT:

24 (A) AMPUTATION OF AN ARM, LEG, HAND, FOOT, THUMB, OR INDEX  
25 FINGER.

26 (B) A COMMINUTED, DISLOCATED, OPEN, COMPOUND, NONUNION, OR  
27 INTRA-ARTICULAR FRACTURE OF THE PELVIS, FEMUR, TIBIA, OR HUMERUS.

1 (C) LOSS OF A REPRODUCTIVE ORGAN.

2 (D) AN INJURY TO THE SPINAL CORD, A SPINAL DISC, OR A VERTEBRA  
3 THAT REQUIRED THE PERSON TO UNDERGO SURGERY ON AN INPATIENT  
4 HOSPITALIZATION BASIS.

5 (E) AN INJURY THAT REQUIRED REPLACEMENT OF A JOINT IN A HIP,  
6 KNEE, OR SHOULDER.

7 (F) PERMANENT PARALYSIS THAT AFFECTS AN IMPORTANT BODY  
8 FUNCTION.

9 (G) LOSS OR REMOVAL OF ALL OR PART OF A VITAL ORGAN, EXCEPT  
10 SKIN.

11 (9) EXCEPT IN CASES DESCRIBED IN SUBSECTION (8), THE ISSUE OF  
12 WHETHER A PERSON SUFFERED A SERIOUS IMPAIRMENT OF BODY FUNCTION AS  
13 A RESULT OF THE ACCIDENT SHALL BE SUBMITTED TO A JURY OR TRIER OF  
14 FACT, AS A QUESTION OF FACT, IF THERE IS EVIDENCE THAT THE PERSON  
15 SUFFERED ANY OF THE FOLLOWING INJURIES:

16 (A) AN INJURY DESCRIBED IN SUBSECTION (8).

17 (B) A CLOSED-HEAD INJURY IF A LICENSED ALLOPATHIC OR  
18 OSTEOPATHIC PHYSICIAN WHO REGULARLY DIAGNOSES OR TREATS CLOSED-HEAD  
19 INJURIES TESTIFIES UNDER OATH THAT THERE MAY BE A SERIOUS  
20 NEUROLOGICAL INJURY.

21 (C) EXCEPT AS PROVIDED IN SUBSECTION (8) (B), A COMMINUTED,  
22 OPEN, DISLOCATED, COMPOUND, NONUNION, OR INTRA-ARTICULAR FRACTURE  
23 OF A BONE, EXCEPT A BONE IN THE FINGER OR TOE.

24 (D) LOSS OF AN EYE OR EAR OR PERMANENT LOSS OF VISION OR  
25 HEARING IN 1 OR BOTH EYES OR EARS.

26 (E) PERMANENT DAMAGE TO THE CARDIOVASCULAR OR RESPIRATORY  
27 SYSTEM THAT IMPAIRS THE FUNCTIONING OF THAT SYSTEM.

1 (F) AN INJURY THAT REQUIRED THE PERSON TO UNDERGO ANY OF THE  
2 FOLLOWING:

3 (i) IF THE INJURY WAS A TRAUMATIC INJURY TO ANY PART OF A  
4 SHOULDER, SURGERY.

5 (ii) EXCEPT AS PROVIDED IN SUBSECTION (8) (B), OPEN REDUCTION OF  
6 A FRACTURE WITH FIXATION. THIS SUBPARAGRAPH DOES NOT APPLY TO A  
7 FRACTURE IN A FINGER OR TOE, UNLESS THE FRACTURE IS LOCATED IN THE  
8 INDEX FINGER OR THUMB.

9 (iii) IF THE INJURY IS A DISLOCATION INJURY, REDUCTION OR  
10 SURGERY TO AN ELBOW, HIP, OR KNEE.

11 (iv) EXCEPT AS PROVIDED IN SUBSECTION (8) (D), IF THE INJURY IS  
12 A HERNIATED OR RUPTURED SPINAL DISC, AS DIAGNOSED BY A LICENSED  
13 NEUROSURGEON OR ORTHOPEDIC SURGEON, SURGERY ON AN OUTPATIENT BASIS.  
14 AS USED IN THIS SUBPARAGRAPH, "SURGERY" DOES NOT INCLUDE  
15 INJECTIONS.

16 (10) EXCEPT FOR CAUSES OF ACTION BASED ON AN INJURY ENUMERATED  
17 IN SUBSECTION (8), ALL OF THE FOLLOWING FACTORS SHALL BE CONSIDERED  
18 BY A COURT UNDER SUBSECTION (2) (A), OR BY A JURY OR TRIER OF FACT  
19 IF A MATERIAL FACTUAL DISPUTE EXISTS, IN DETERMINING WHETHER THE  
20 INJURED PERSON SUFFERED A SERIOUS IMPAIRMENT OF BODY FUNCTION:

21 (A) THE NATURE AND EXTENT OF THE INJURY AND IMPAIRMENT.

22 (B) THE TYPE AND DURATION OF TREATMENT REQUIRED.

23 (C) THE DURATION OF THE INJURY AND IMPAIRMENT.

24 (D) THE EXTENT OF ANY RESIDUAL INJURY AND IMPAIRMENT.

25 (E) THE PROGNOSIS FOR EVENTUAL RECOVERY.

26 (F) THE DIFFERENCES BETWEEN THE PERSON'S LIFE BEFORE AND AFTER  
27 THE ACCIDENT THAT WERE CAUSED BY THE INJURY AND IMPAIRMENT.



1 (G) ANY OTHER RELEVANT FACTORS.

2 (11) THE FACTORS STATED IN SUBSECTION (10) ARE NOT EXCLUSIVE,  
3 AND NO INDIVIDUAL FACTOR IS DISPOSITIVE.

4 (12) THE JURY OR TRIER OF FACT SHALL NOT CONSIDER THE  
5 INCLUSION OR EXCLUSION OF INJURIES AND TREATMENTS ENUMERATED IN  
6 SUBSECTIONS (8) AND (9) IN DETERMINING WHETHER THE INJURED PERSON  
7 SUFFERED A SERIOUS IMPAIRMENT OF BODY FUNCTION.

8 (13) IF, UNDER SUBSECTION (2) OR (9), THE JURY OR TRIER OF  
9 FACT IS TO RESOLVE THE QUESTION OF WHETHER THE ACCIDENT RESULTED IN  
10 A SERIOUS IMPAIRMENT OF BODY FUNCTION, THE JURY OR TRIER OF FACT  
11 MUST FIND THAT A SERIOUS IMPAIRMENT OF BODY FUNCTION EXISTS IF THE  
12 JURY OR TRIER OF FACT FINDS THAT THE PERSON SUSTAINED ANY OF THE  
13 INJURIES DESCRIBED IN SUBSECTION (8).

14 (14) THE CHANGES TO THIS SECTION BY THE AMENDATORY ACT THAT  
15 ADDED THIS SUBSECTION APPLY TO ACTIONS FILED ON AND AFTER AND  
16 ACTIONS PENDING IN A TRIAL OR APPELLATE COURT ON THE EFFECTIVE DATE  
17 OF THE AMENDATORY ACT THAT ADDED THIS SUBSECTION.

18 Sec. 3157. (1) ~~A~~SUBJECT TO SUBSECTION (2), A physician,  
19 hospital, clinic, or other person or institution lawfully rendering  
20 treatment to an injured person for an accidental bodily injury  
21 covered by personal protection insurance, and a person or  
22 institution providing rehabilitative occupational training  
23 following the injury, may charge a reasonable amount for the  
24 products, services, and accommodations rendered. The charge shall  
25 not exceed the amount the person or institution customarily charges  
26 for like products, services, and accommodations in cases not  
27 involving **PERSONAL PROTECTION** insurance.

1           (2) A PHYSICIAN, HOSPITAL, CLINIC, OR OTHER PERSON OR  
2 INSTITUTION LAWFULLY RENDERING TREATMENT TO AN INJURED PERSON FOR  
3 AN ACCIDENTAL BODILY INJURY COVERED BY PERSONAL PROTECTION  
4 INSURANCE, OR A PERSON OR INSTITUTION PROVIDING REHABILITATIVE  
5 OCCUPATIONAL TRAINING FOLLOWING THE INJURY, IS LIMITED TO, AND  
6 SHALL BE PAID BY THE AUTOMOBILE INSURER AT, AN AMOUNT THAT DOES NOT  
7 EXCEED THE AMOUNT PAID FOR TREATMENT, SERVICE, ACCOMMODATION, AND  
8 MEDICINE UNDER R 418.10101 TO R 418.101503 OF THE MICHIGAN  
9 ADMINISTRATIVE CODE OR SCHEDULES OF MAXIMUM FEES FOR WORKER'S  
10 COMPENSATION DEVELOPED PURSUANT TO THOSE RULES. THE COMMISSIONER  
11 SHALL EXAMINE CHANGES TO R 418.10101 TO R 418.101503 OF THE  
12 MICHIGAN ADMINISTRATIVE CODE MADE AFTER THE EFFECTIVE DATE OF THE  
13 AMENDATORY ACT THAT ADDED THIS SUBSECTION. IF THE COMMISSIONER  
14 FINDS THAT THOSE CHANGES ARE REASONABLE AND APPROPRIATE FOR  
15 PURPOSES OF AUTOMOBILE INSURANCE, THOSE CHANGES SHALL APPLY TO THIS  
16 SECTION AND THE COMMISSIONER SHALL ISSUE AN ORDER TO THAT EFFECT.

17           Sec. 3163. (1) An insurer authorized to transact automobile  
18 liability insurance and personal and property protection insurance  
19 in this state shall file and maintain a written certification that  
20 any accidental bodily injury or property damage occurring in this  
21 state arising from the ownership, operation, maintenance, or use of  
22 a motor vehicle as a motor vehicle by an out-of-state resident who  
23 is insured under its automobile liability insurance policies, is  
24 subject to the personal and property protection insurance system  
25 under this act.

26           (2) A nonadmitted insurer may voluntarily file the  
27 certification described in subsection (1).

(3) Except as otherwise provided in subsection (4), if a certification filed under subsection (1) or (2) applies to accidental bodily injury or property damage, the insurer and its insureds with respect to that injury or damage have the rights and immunities under this act for personal and property protection insureds, and claimants have the rights and benefits of personal and property protection insurance claimants, including the right to receive benefits from the electing insurer as if it were an insurer of personal and property protection insurance applicable to the accidental bodily injury or property damage.

(4) If an insurer of an out-of-state resident is required to provide benefits under subsections (1) to (3) to that out-of-state resident for accidental bodily injury for an accident in which the out-of-state resident was not an occupant of a motor vehicle registered in this state, the insurer is only liable for the amount of ultimate loss sustained up to ~~\$500,000.00~~ **\$250,000.00**. Benefits under this subsection are not recoverable to the extent that benefits covering the same loss are available from other sources, regardless of the nature or number of benefit sources available and regardless of the nature or form of the benefits.

Sec. 3172. (1) A person entitled to claim because of accidental bodily injury arising out of the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle in this state may obtain personal protection insurance benefits through an assigned claims plan ~~if~~ **IN ANY OF THE FOLLOWING SITUATIONS:**

**(A) IF** no personal protection insurance is applicable to the injury. 7

1       **(B) IF** no personal protection insurance applicable to the  
 2 injury can be identified. ~~7~~

3       **(C) IF** the personal protection insurance applicable to the  
 4 injury cannot be ascertained because of a dispute between 2 or more  
 5 automobile insurers concerning their obligation to provide coverage  
 6 or the equitable distribution of the loss. ~~7-07~~

7       **(D) IF** the only identifiable personal protection insurance  
 8 applicable to the injury is, because of financial inability of 1 or  
 9 more insurers to fulfill their obligations, inadequate to provide  
 10 benefits up to the maximum prescribed. ~~In such case~~

11       **(2) IN ANY OF THE SITUATIONS UNDER SUBSECTION (1),** unpaid  
 12 benefits due or coming due are subject to being collected under the  
 13 assigned claims plan, and the insurer to which the claim is  
 14 assigned, or the assigned claims facility if the claim is assigned  
 15 to it, is entitled to reimbursement from the defaulting insurers to  
 16 the extent of their financial responsibility.

17       **(3) ~~(2)~~** Except as otherwise provided in this subsection,  
 18 personal protection insurance benefits, including benefits arising  
 19 from accidents occurring before ~~the effective date of this~~  
 20 ~~subsection, MARCH 29, 1985,~~ payable through an assigned claims plan  
 21 shall be reduced to the extent that benefits covering the same loss  
 22 are available from other sources, regardless of the nature or  
 23 number of benefit sources available and regardless of the nature or  
 24 form of the benefits, to a person claiming personal protection  
 25 insurance benefits through the assigned claims plan. This  
 26 subsection ~~shall only apply when~~ **ONLY APPLIES IF** the personal  
 27 protection insurance benefits are payable through the assigned

1 claims plan because no personal protection insurance is applicable  
 2 to the injury, no personal protection insurance applicable to the  
 3 injury can be identified, or the only identifiable personal  
 4 protection insurance applicable to the injury is, because of  
 5 financial inability of 1 or more insurers to fulfill their  
 6 obligations, inadequate to provide benefits up to the maximum  
 7 prescribed. As used in this subsection "sources" and "benefit  
 8 sources" do not include the program for medical assistance for the  
 9 medically indigent under the social welfare act, ~~Act No. 280 of the~~  
 10 ~~Public Acts of 1939, being sections 400.1 to 400.121 of the~~  
 11 ~~Michigan Compiled Laws, or insurance under the health insurance for~~  
 12 ~~the aged act, title XVIII of the social security amendments of 1965~~  
 13 **1939 PA 280, MCL 400.1 TO 400.119B, OR THE FEDERAL MEDICARE PROGRAM**  
 14 **ESTABLISHED UNDER TITLE XVIII OF THE SOCIAL SECURITY ACT, 42 USC**  
 15 **1395 TO 1395KKK-1.**

16 (4) ~~(3)~~ If the obligation to provide personal protection  
 17 insurance benefits cannot be ascertained because of a dispute  
 18 between 2 or more automobile insurers concerning their obligation  
 19 to provide coverage or the equitable distribution of the loss, and  
 20 if a method of voluntary payment of benefits cannot be agreed upon  
 21 among or between the disputing insurers, all of the following shall  
 22 apply:

23 (a) The insurers who are parties to the dispute shall, or the  
 24 claimant may, immediately notify the assigned claims facility of  
 25 their inability to determine their statutory obligations.

26 (b) The claim shall be assigned by the assigned claims  
 27 facility to an insurer ~~which~~ **THAT** shall immediately provide

1 personal protection insurance benefits to the claimant or claimants  
2 entitled to benefits **IN THE LOWEST AMOUNT APPLICABLE AMONG THE**  
3 **POLICIES IN DISPUTE.**

4 (c) An action shall be immediately commenced on behalf of the  
5 assigned claims facility by the insurer to whom the claim is  
6 assigned in circuit court for the purpose of declaring the rights  
7 and duties of any interested party.

8 (d) The insurer to whom the claim is assigned shall join as  
9 parties defendant each insurer disputing either the obligation to  
10 provide personal protection insurance benefits or the equitable  
11 distribution of the loss among the insurers.

12 (e) The circuit court shall declare the rights and duties of  
13 any interested party whether or not other relief is sought or could  
14 be granted.

15 (f) After hearing the action, the circuit court shall  
16 determine the insurer or insurers, if any, obligated to provide the  
17 applicable personal protection insurance benefits and the equitable  
18 distribution, if any, among the insurers obligated therefor, and  
19 shall order reimbursement to the assigned claims facility from the  
20 insurer or insurers to the extent of the responsibility as  
21 determined by the court. ~~The reimbursement ordered under this~~  
22 ~~subdivision shall include all benefits and costs paid or incurred~~  
23 ~~by the assigned claims facility and all benefits and costs paid or~~  
24 ~~incurred by insurers determined not to be obligated to provide~~  
25 ~~applicable personal protection insurance benefits, including~~  
26 ~~reasonable attorney fees and interest at the rate prescribed in~~  
27 ~~section 3175 as of December 31 of the year preceding the~~

~~determination of the circuit court.~~

(5) IF NO PERSONAL PROTECTION INSURANCE IS APPLICABLE TO THE INJURY OR NO PERSONAL PROTECTION INSURANCE APPLICABLE TO THE INJURY CAN BE IDENTIFIED, PERSONAL PROTECTION INSURANCE BENEFITS SHALL BE PAID ONLY TO THE LIMIT PROVIDED FOR IN SECTION 3107(1)(A)(i). IF THE ONLY IDENTIFIABLE PERSONAL PROTECTION INSURANCE APPLICABLE TO THE INJURY IS, BECAUSE OF FINANCIAL INABILITY OF 1 OR MORE INSURERS TO FULFILL THEIR OBLIGATIONS, INADEQUATE TO PROVIDE BENEFITS UP TO THE MAXIMUM PRESCRIBED, PERSONAL PROTECTION INSURANCE BENEFITS SHALL BE PAID TO THE LIMIT SELECTED BY THE INSURED UNDER SECTION 3107(1)(A) OR AS PROVIDED IN SECTION 3107(3)(A).

(6) ANY REIMBURSEMENT ORDERED UNDER THIS SECTION AND ANY RECOVERY OBTAINED IN CIRCUMSTANCES WHERE PERSONAL PROTECTION INSURANCE BENEFITS HAVE BEEN OR MAY BE PAID THROUGH THE ASSIGNED CLAIMS FACILITY SHALL INCLUDE ALL BENEFITS AND COSTS PAID OR INCURRED BY INSURERS DETERMINED NOT TO BE OBLIGATED TO PROVIDE THE APPLICABLE PERSONAL PROTECTION INSURANCE BENEFITS, INCLUDING REASONABLE ATTORNEY FEES AND INTEREST AT THE RATE PRESCRIBED IN SECTION 3175 AS OF DECEMBER 31 OF THE YEAR PRECEDING THE REIMBURSEMENT ORDER OR RECOVERY DETERMINATION.

SEC. 3178. (1) THE COMMISSIONER SHALL DEVELOP AND MAKE AVAILABLE TO THE PUBLIC 1 OR MORE INFORMATIONAL PAMPHLETS EXPLAINING THE SUBSTANCE OF THE CHANGES TO THIS CHAPTER MADE BY THE AMENDATORY ACT THAT ADDED THIS SECTION. THE PAMPHLET SHALL INCLUDE IN PARTICULAR, BUT NOT BE LIMITED TO, AN EXPLANATION OF THE ADOPTION OF MULTIPLE LIMITS FOR PERSONAL PROTECTION BENEFITS UNDER SECTION 3107(1)(A), THE ABILITY OF AN INSURED TO CHOOSE THE

1 APPLICABLE LIMIT, WHEN THE INSURED WILL HAVE THE OPPORTUNITY TO  
2 MAKE THE CHOICE AND WHEN THE CHOICE MADE WILL BE EFFECTIVE, AND THE  
3 CONSEQUENCES OF THAT CHOICE.

4 (2) BEFORE JULY 1, 2013, THE COMMISSIONER SHALL REPORT TO THE  
5 STANDING COMMITTEES OF THE SENATE AND THE HOUSE OF REPRESENTATIVES  
6 WITH PRIMARY JURISDICTION OVER INSURANCE MATTERS ON THE EFFECT OF  
7 THE CHANGES TO THIS CHAPTER MADE BY THE AMENDATORY ACT THAT ADDED  
8 THIS SECTION, INCLUDING IN PARTICULAR, BUT NOT LIMITED TO, THE  
9 ADOPTION OF MULTIPLE LIMITS FOR PERSONAL PROTECTION BENEFITS UNDER  
10 SECTION 3107(1)(A). THE REPORT SHALL CONTAIN ANY RECOMMENDATIONS OF  
11 THE COMMISSIONER FOR CHANGES TO THIS CHAPTER.

12 (3) FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2012, \$50,000.00  
13 IS APPROPRIATED FROM THE GENERAL FUND TO THE DEPARTMENT OF  
14 LICENSING AND REGULATORY AFFAIRS TO BE USED BY THE OFFICE OF  
15 INSURANCE AND FINANCIAL SERVICES TO IMPLEMENT THIS SECTION.

16 Enacting section 1. (1) Sections 3101, 3104, 3107, 3114, 3115,  
17 3163, and 3172 of the insurance code of 1956, 1956 PA 218, MCL  
18 500.3101, 500.3104, 500.3107, 500.3114, 500.3115, 500.3163, and  
19 500.3172, as amended by this amendatory act, and section 1245 of  
20 the insurance code of 1956, 1956 PA 218, as added by this  
21 amendatory act, take effect on July 1, 2012.

22 (2) Section 3157 of the insurance code of 1956, 1956 PA 218,  
23 MCL 500.3157, as amended by this amendatory act, and section 3107c  
24 of the insurance code of 1956, 1956 PA 218, as added by this  
25 amendatory act, take effect on the effective date of this  
26 amendatory act and apply to products, services, and accommodations  
27 that are provided on and after the effective date of this



1 amendatory act irrespective of the date of loss, but do not affect  
2 any obligation involving a specific claim under a written agreement  
3 or consent judgment entered into before the effective date of this  
4 amendatory act.

5 (3) Section 3135 of the insurance code of 1956, 1956 PA 218,  
6 MCL 500.3135, as amended by this amendatory act, takes effect on  
7 the effective date of this amendatory act.