

HOUSE BILL No. 4199

February 16, 1989, Introduced by Reps. Ciaramitaro and Hollister and referred to the Committee on Judiciary.

A bill to amend section 3172 of Act No. 218 of the Public Acts of 1956, entitled as amended "The insurance code of 1956," as amended by Act No. 426 of the Public Acts of 1984, being section 500.3172 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 3172 of Act No. 218 of the Public Acts
2 of 1956, as amended by Act No. 426 of the Public Acts of 1984,
3 being section 500.3172 of the Michigan Compiled Laws, is amended
4 to read as follows:

5 Sec. 3172. (1) A person entitled to claim because of acci-
6 dental bodily injury arising out of the ownership, operation,
7 maintenance, or use of a motor vehicle as a motor vehicle in this
8 state may obtain personal protection insurance benefits through
9 an assigned claims plan if no personal protection insurance is

1 applicable to the injury, no personal protection insurance
2 applicable to the injury can be identified, the personal protec-
3 tion insurance applicable to the injury cannot be ascertained
4 because of a dispute between 2 or more automobile insurers con-
5 cerning their obligation to provide coverage or the equitable
6 distribution of the loss, or the only identifiable personal pro-
7 tection insurance applicable to the injury is, because of finan-
8 cial inability of 1 or more insurers to fulfill their obliga-
9 tions, inadequate to provide benefits up to the maximum
10 prescribed. In such case unpaid benefits due or coming due are
11 subject to being collected under the assigned claims plan, and
12 the insurer to which the claim is assigned, or the assigned
13 claims facility if the claim is assigned to it, is entitled to
14 reimbursement from the defaulting insurers to the extent of their
15 financial responsibility.

16 (2) Except as otherwise provided in this subsection, per-
17 sonal protection insurance benefits, including benefits arising
18 from accidents occurring before ~~the effective date of this~~
19 ~~subsection~~ MARCH 29, 1985, payable through an assigned claims
20 plan shall be reduced to the extent that benefits covering the
21 same loss are available from other sources, regardless of the
22 nature or number of benefit sources available and regardless of
23 the nature or form of the benefits, to a person claiming personal
24 protection insurance benefits through the assigned claims plan.
25 This subsection shall only apply when the personal protection
26 insurance benefits are payable through the assigned claims plan
27 because no personal protection insurance is applicable to the

1 injury, no personal protection insurance applicable to the injury
2 can be identified, or the only identifiable personal protection
3 insurance applicable to the injury is, because of financial
4 inability of 1 or more insurers to fulfill their obligations,
5 inadequate to provide benefits up to the maximum prescribed. As
6 used in this subsection "sources" and "benefit sources" do not
7 include the program for medical assistance for the medically
8 indigent under the social welfare act, Act No. 280 of the Public
9 Acts of 1939, being sections 400.1 to 400.121 of the Michigan
10 Compiled Laws, or insurance under ~~the health insurance for the~~
11 ~~aged act, title XVIII of the social security amendments of 1965~~
12 TITLE XVIII OF THE SOCIAL SECURITY ACT, 42 U.S.C. 1395 TO 1395b,
13 1395b-2, 1395c TO 1395i, 1395i-1a TO 1395i-3, 1395j TO 1395dd,
14 1395ff TO 1395mm, AND 1395oo TO 1395ccc.

15 (3) THE INSURER TO WHICH THE CLAIM IS ASSIGNED, OR THE
16 ASSIGNED CLAIMS FACILITY IF THE CLAIM IS ASSIGNED TO IT, SHALL
17 DETERMINE WHETHER THE PERSON OBTAINING PERSONAL PROTECTION INSUR-
18 ANCE BENEFITS HAS ALSO RECEIVED MEDICAL SERVICES UNDER A PROGRAM
19 FOR MEDICAL ASSISTANCE FOR THE MEDICALLY INDIGENT OR A RESIDENT
20 COUNTY HOSPITALIZATION PROGRAM UNDER ACT NO. 280 OF THE PUBLIC
21 ACTS OF 1939. IF IT IS DETERMINED THAT THE PERSON HAS RECEIVED
22 MEDICAL SERVICES UNDER A PROGRAM FOR MEDICAL ASSISTANCE, THEN THE
23 INSURER OR THE ASSIGNED CLAIMS FACILITY SHALL FIRST REIMBURSE THE
24 PROGRAM FOR MEDICAL ASSISTANCE FOR THE MEDICAL SERVICES RELATED
25 TO THE ACCIDENT BEFORE PAYING THE PERSON CLAIMING PERSONAL PRO-
26 TECTION INSURANCE BENEFITS.

1 (4) ~~(3)~~ If the obligation to provide personal protection
2 insurance benefits cannot be ascertained because of a dispute
3 between 2 or more automobile insurers concerning their obligation
4 to provide coverage or the equitable distribution of the loss,
5 and if a method of voluntary payment of benefits cannot be agreed
6 upon among or between the disputing insurers, all of the follow-
7 ing shall apply:

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

11 (b) The claim shall be assigned by the assigned claims
12 facility to an insurer which shall immediately provide personal
13 protection insurance benefits to the claimant or claimants enti-
14 tled to benefits.

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

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

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

26 (f) After hearing the action, the circuit court shall
27 determine the insurer or insurers, if any, obligated to provide

1 the applicable personal protection insurance benefits and the
2 equitable distribution, if any, among the insurers obligated
3 ~~therefor~~ FOR THOSE BENEFITS; and shall order reimbursement to
4 the assigned claims facility from the insurer or insurers to the
5 extent of the responsibility as determined by the court. The
6 reimbursement ordered under this subdivision shall include all
7 benefits and costs paid or incurred by the assigned claims facil-
8 ity and all benefits and costs paid or incurred by insurers
9 determined not to be obligated to provide applicable personal
10 protection insurance benefits, including reasonable attorney fees
11 and interest at the rate prescribed in section 3175 as of
12 December 31 of the year preceding the determination of the cir-
13 cuit court.