

HOUSE BILL No. 4916

June 8, 1989, Introduced by Reps. Saunders, Clack, Joe Young, Sr., Watkins, Kosteva, Martin, Gire, Kilpatrick, Wallace, Gubow, Owen, Murphy, Emerson, DeMars, Varga, Stupak, Terrell, Webb, Stallworth, Berman, Scott, Keith, Hunter, Nye, Pitoniak, Ostling, Perry Bullard, Leland, Joe Young, Jr., Porreca, Spaniola, Hollister, Jondahl, Bennane, Barns, Bankes and Runco and referred to the Committee on Insurance.

A bill to amend section 3135 of Act No. 218 of the Public Acts of 1956, entitled as amended

"The insurance code of 1956,"

being section 500.3135 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 3135 of Act No. 218 of the Public Acts
2 of 1956, being section 500.3135 of the Michigan Compiled Laws, is
3 amended to read as follows:

4 Sec. 3135. (1) A person INSURED WITH THE SECURITY REQUIRED
5 BY SECTION 3101 remains subject to tort liability for noneconomic
6 loss caused by his or her ownership, OPERATION, maintenance, or
7 use of a motor vehicle only if the injured person has suffered
8 death, serious impairment of body function, or permanent serious
9 disfigurement. IN AN ACTION FOR DAMAGES PURSUANT TO THIS
10 SUBSECTION, ALL OF THE FOLLOWING APPLY:

1 (A) THE ISSUE OF WHETHER AN INJURED PERSON HAS SUFFERED A
2 SERIOUS IMPAIRMENT OF BODY FUNCTION OR PERMANENT SERIOUS DISFIG-
3 UREMENT IS A QUESTION FOR THE TRIER OF FACT IF REASONABLE MINDS
4 COULD DIFFER AS TO THE CONCLUSION, EVEN IF EVIDENTIARY FACTS ARE
5 UNDISPUTED.

6 (B) AS USED IN THIS SUBSECTION, "SERIOUS IMPAIRMENT OF BODY
7 FUNCTION" MEANS AN INJURY THAT IMPAIRS, TO SOME EXTENT, 1 OR MORE
8 BODY FUNCTIONS OR THE INJURED PERSON'S ABILITY TO FUNCTION IN HIS
9 OR HER NORMAL CAPACITY. THE TERM "SERIOUS IMPAIRMENT OF BODY
10 FUNCTION" HAS NO SPECIAL OR TECHNICAL MEANING IN THE LAW AND
11 SHALL BE INTERPRETED IN THE ORDINARY SENSE OF ITS COMMON USAGE,
12 AND MAY INCLUDE MENTAL OR EMOTIONAL INJURY OR OTHER PSYCHOLOGICAL
13 IMPAIRMENTS. AN IMPAIRMENT NEED NOT BE PERMANENT TO BE SERIOUS.
14 ONCE THE TRIER OF FACT HAS DETERMINED THAT A PERSON SUSTAINED A
15 SERIOUS IMPAIRMENT OF BODY FUNCTION, THE INJURED PERSON IS ENTI-
16 TLED TO RECOVER DAMAGES FOR NONECONOMIC LOSS FOR AS LONG AS THOSE
17 DAMAGES ARE INCURRED. IN DETERMINING A SERIOUS IMPAIRMENT OF
18 BODY FUNCTION, THE TRIER OF FACT MAY CONSIDER CERTAIN SPECIFIC
19 FACTORS INCLUDING ALL OF THE FOLLOWING:

20 (i) THE PARTICULAR BODY FUNCTION IMPAIRED.

21 (ii) THE EXTENT OF THE IMPAIRMENT.

22 (iii) THE IMPACT ON THE INJURED PERSON'S LIFESTYLE.

23 (iv) THE LENGTH OF TIME THE IMPAIRMENT LASTED.

24 (v) THE TREATMENT REQUIRED OR THAT MAY BE REQUIRED IN THE
25 FUTURE TO TREAT THE IMPAIRMENT.

26 (vi) OTHER RELEVANT FACTORS.

1 (C) EXCEPT AS AUTHORIZED UNDER SECTION 5851 OF THE REVISED
2 JUDICATURE ACT OF 1961, ACT NO. 236 OF THE PUBLIC ACTS OF 1961,
3 BEING SECTION 600.5851 OF THE MICHIGAN COMPILED LAWS, AN ACTION
4 UNDER THIS SUBSECTION SHALL NOT BE COMMENCED LATER THAN 3 YEARS
5 AFTER AN INJURY RESULTS IN DEATH, SERIOUS IMPAIRMENT OF BODY
6 FUNCTION, OR PERMANENT SERIOUS DISFIGUREMENT.

7 (2) Notwithstanding any other provision of law, tort liabil-
8 ity arising from the ownership, OPERATION, maintenance, or use
9 within this state of a motor vehicle with respect to which the
10 security required by section ~~3101(3)~~ 3101 and (4) was in effect
11 is abolished except as to:

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

19 (b) Damages for noneconomic loss as provided and limited in
20 subsection (1).

21 (c) Damages FOR LOSS OF EARNING CAPACITY AND for allowable
22 expenses, work loss, and survivor's loss as defined in sections
23 3107 to 3110 in excess of the daily, monthly, and 3-year limita-
24 tions contained in those sections. The party liable for damages
25 is entitled to an exemption reducing his or her liability by the
26 amount of taxes that would have been payable on account of income

1 the injured person would have received if he or she had not been
2 injured.

3 (d) Damages up to \$400.00 to motor vehicles, to the extent
4 that the damages are not covered by insurance. An action for
5 damages pursuant to this subdivision shall be conducted in com-
6 pliance with subsection (3).

7 (3) In an action for damages pursuant to subsection (2)(d):

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

11 (b) Liability shall not be a component of residual liability-
12 ty, as prescribed in section 3131, for which maintenance of
13 security is required by this act.

14 (4) Actions under subsection (2)(d) shall be commenced,
15 whenever legally possible, in the small claims division of the
16 district court or ~~the conciliation division of the common pleas~~
17 ~~court of the city of Detroit or~~ the municipal court. If the
18 defendant or plaintiff removes ~~such an~~ THE action to a higher
19 court and does not prevail, the judge may assess costs.

20 (5) A decision of a court made pursuant to subsection
21 (2)(d), shall not be res judicata in any proceeding to determine
22 any other liability arising from the same circumstances as gave
23 rise to the action brought pursuant to subsection (2)(d).

24 (6) ~~Subsections (2)(d), (3), (4), and (5) shall take effect~~
25 ~~July 1, 1980.~~ THE TORT LIABILITY LIMITATIONS OR IMMUNITIES SET
26 FORTH IN THIS SECTION SHALL NOT APPLY IF IT IS DETERMINED THAT A
27 DEFENDANT'S CONSUMPTION OF ALCOHOL OR CONTROLLED SUBSTANCES

1 CAUSED OR CONTRIBUTED TO AN ACCIDENT OR INJURY, OR THE
2 DEFENDANT'S CONDUCT CONSTITUTES RECKLESS DRIVING, GROSS NEGLIGENCE,
3 GENCE, OR OTHER SIMILAR EGREGIOUS BEHAVIOR.