

# HOUSE BILL No. 4032

January 22, 2007, Introduced by Rep. Rocca and referred to the Committee on Judiciary.

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

1 serious impairment of body function or permanent serious  
2 disfigurement are questions of law for the court if the court finds  
3 either of the following:

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

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

14 (b) ~~Damages~~ **EXCEPT AS OTHERWISE PROVIDED IN SUBDIVISION (D),**  
15 **DAMAGES** shall be assessed on the basis of comparative fault, except  
16 that damages shall not be assessed in favor of a party who is more  
17 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 **(D) DAMAGES SHALL NOT BE ASSESSED IN FAVOR OF A PARTY WHO IS**  
23 **CONVICTED OF OPERATING A MOTOR VEHICLE IN VIOLATION OF SECTION**  
24 **625(1) OF THE MICHIGAN VEHICLE CODE, 1949 PA 300, MCL 257.625, AT**  
25 **THE TIME THE INJURY OCCURRED AND WHO CAUSED OR CONTRIBUTED TO THE**  
26 **TRAFFIC ACCIDENT.**

27 (3) Notwithstanding any other provision of law, tort liability

1 arising from the ownership, maintenance, or use within this state  
2 of a motor vehicle with respect to which the security required by  
3 section 3101 was in effect is abolished except as to:

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

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

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

20 (d) Damages for economic loss by a nonresident in excess of  
21 the personal protection insurance benefits provided under section  
22 3163(4). Damages under this subdivision are not recoverable to the  
23 extent that benefits covering the same loss are available from  
24 other sources, regardless of the nature or number of benefit  
25 sources available and regardless of the nature or form of the  
26 benefits.

27 (e) Damages up to \$500.00 to motor vehicles, to the extent

1 that the damages are not covered by insurance. An action for  
2 damages pursuant to this subdivision shall be conducted in  
3 compliance with subsection (4).

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

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

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

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

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

20 (7) As used in this section, "serious impairment of body  
21 function" means an objectively manifested impairment of an  
22 important body function that affects the person's general ability  
23 to lead his or her normal life.