

NO-FAULT AUTO INSURANCE REVISIONS

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House Bill 4301 with House committee amendment

Sponsor: Rep. Paul Condino

Committee: Judiciary

Complete to 3-8-07

A SUMMARY OF HOUSE BILL 4301 AS REPORTED BY COMMITTEE

The bill would amend the Michigan no-fault automobile insurance law within the Insurance Code to:

- Revise the definition of "serious impairment of body function."
- Revise the criteria used to determine whether it is a judge or a jury who decides if the threshold for serious impairment of a body function has been met.
- Revise the criteria that a judge or jury would use to determine if a person had suffered serious impairment of body function.
- Establish factors to be used in determining whether a person's ability to lead a normal life has been affected at any point in time.
- Allow an injured person to sue for loss of earning capacity.
- Allow an injured person to sue for noneconomic damages even if his or her suffering has ceased or will cease.
- Require insurers to reimburse an injured person for certain kinds of payments the injured person has had to make.
- Specify that the change in definition and use of criteria to determine serious impairment of body function is "curative and intended to correct a misinterpretation of law and legislative intent" occurring in a Michigan Supreme Court decision.
- Apply the changes made by the bill to cases currently pending in the trial or appellate court as of the bill's effective date, as well as to cases filed on or after the effective date.

Under Michigan's no-fault automobile insurance system, motorists look to their own insurance policies for benefits (including medical treatment and lost wages) in case of accidents and can only sue another motorist in special circumstances.

The no-fault act contains a verbal threshold (as opposed to a dollar amount threshold) that must be overcome to sue for non-economic damages. Lawsuits are only permitted for non-economic losses (e.g., pain and suffering) in case of "death, serious impairment of body function, or permanent serious disfigurement." In addition, people can sue for intentionally caused harm; allowable expenses, work loss, and survivor's loss beyond those covered by no-fault insurance; and, under the so-called mini-tort for damages to motor vehicles not covered by insurance, such as deductibles, up to \$500. As noted above, the bill would make several significant changes to this section of law.

Question of law. A question of law is decided by the court (a judge). A question of fact is decided by a jury or by a court (i.e., bench trials where a judge rather than a jury renders the verdict or outcome). In a tort action for negligence, either party can request a jury trial.

Currently, the no-fault statute provides that the issues of whether an injured person has suffered serious impairment of body function or permanent serious disfigurement are questions of law for the court if the court finds either of the following:

- 1) There is no factual dispute concerning the nature and extent of the person's injuries.
- 2) There is a factual dispute concerning the nature and extent of the person's injuries, but the dispute is not material to the determination as to whether the person has suffered a serious impairment of body function or permanent serious disfigurement.

The bill would delete the two paragraphs above and instead specify that the issues of whether an injured person suffered serious impairment of body function or permanent serious disfigurement are questions of law for the court if the court finds that there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law.

Head injury exception. The no-fault act currently makes an exception for a closed-head injury: for a closed-head injury, a question of fact for the jury is created if a licensed physician who regularly diagnoses or treats closed-head injuries testifies under oath that there may be a serious neurological injury. This provision would remain unchanged.

Definition of "serious impairment of body function." Currently, this term is defined to mean:

An objectively manifested impairment of an important body function that affects the person's general ability to lead his or her normal life.

The bill would revise the term to mean:

An objectively manifested injury or impairment involving an important body function that has affected, affects, or may affect in the future the person's ability (rather than "general ability") to lead his or her normal life. (Changes are underlined.)

Determination of "serious impairment of body function." The bill would specify that in making a determination that a person suffered "serious impairment of body function," all of the following would apply.

Notwithstanding anything to the contrary, serious impairment of body function would not require a showing, at any point in time, of any of the following:

- That the injury or impairment, or its effect, altered the course or trajectory of the person's life, caused the person to be generally unable or for the most part unable to

live his or her normal life, or caused the person's life after the injury to be substantially different from the person's life before the injury.

- That the injury or impairment or its effect, was permanent, severe, substantial, extensive, or pervasive or lasted for a significant period of time.
- That there were physician-imposed restrictions.

In determining whether the person's ability to lead his or her normal life had been affected at any point in time, the trier of fact or a court deciding this issue as a matter of law would have to consider all of the following factors:

- The nature of the injury or impairment.
- The type of treatment required.
- The duration of the injury, impairment, or treatment.
- The existence of, or the prognosis for, any residual injury or impairment.
- The impact of the injury or impairment on the injured person's quality of life.
- Any other relevant factors.

The bill says that these factors could not be exclusive, and no individual factor could be dispositive.

Curing the Supreme Court's misinterpretation. The bill would specify that the changes to the definition of serious impairment of body function and the factors to be used in making a determination of serious impairment of body function are curative and intended to correct the misinterpretation of law and legislative intent that occurred in the Michigan Supreme Court decision in *Kreiner v Fischer* and *Staub v Collette and Heil-Wylie*, 471 Mich 109; 683 NW2d 611 (2004), and subsequent appellate cases. Changes made to the act by House Bill 4301 would apply to cases pending in the trial or appellate court on the bill's effective date and to cases filed on or after the bill's effective date.

Abolishment of tort liability. Under the no-fault act, tort liability arising from the ownership, maintenance, or use within the state of a motor vehicle with respect to which the insurance coverage required by the Insurance Code is abolished except for several specific situations (e.g., noneconomic damages if a certain threshold of injury occurred, as discussed above). The bill would make three revisions to this provision as follows (changes are underlined):

- 1) The bill would abolish tort liability arising from the ownership, operation, maintenance, or use of a motor vehicle within the state except for the specified situations.
- 2) Currently, a person can bring a tort action for intentionally caused harm to persons or property. The bill instead would specify that tort liability would exist for intentionally caused economic or noneconomic damages of any nature or extent to persons or property.
- 3) A person can currently sue for damages for allowable expenses, work loss, and survivor's loss in excess of the daily, monthly, and three-year limitations contained in the code. The bill would add to these the ability to sue for damages for loss of earning capacity.

Assessment of damages. Currently, damages must be assessed on the basis of comparative fault, except that damages cannot be assessed in favor of a party who is more than 50 percent at fault. The bill would revise this provision to specify that economic and noneconomic damages must be assessed on the basis of comparative fault, except that noneconomic damages could not be assessed in favor of a plaintiff who was more than 50 percent at fault or reduced in favor of a defendant who was more than 50 percent at fault. (Underlining denotes changes.)

In addition, damages cannot currently be assessed in favor of a party who was operating his or her own vehicle at the time of the injury and did not carry required insured coverage on the vehicle. Instead, the bill would specify that noneconomic damages could not be assessed in favor of a party who was operating a motor vehicle titled or registered in the name of that party at the time of the injury if the required insurance coverage for that motor vehicle was not in effect.

Recovery of damages. The bill would add a provision specifying that an injured person who had sustained serious impairment of body function, and who was otherwise entitled to recover damages for noneconomic loss in a tort liability claim as a result, is entitled to all damages for noneconomic loss suffered by that person as a proximate result of the incident giving rise to the tort liability claim, regardless of whether the injured person had ceased to suffer, or in the future would cease to suffer, serious impairment of body function.

In addition, if an injured person recovered damages for noneconomic loss or excess economic loss and was required to pay all or a portion of that recovery to any person or entity claiming a lien or right of reimbursement, subrogation, recoupment, or offset against the recovery, the insurer responsible for paying personal injury protection insurance benefits to the injured person would have to reimburse the injured person for the amount he or she (the injured person) was required to pay the person or entity (the one claiming a lien, etc.), to the extent that the payment would have been payable by the insurer if the person or entity (the one claiming a lien, etc.) had not paid those amounts.

FISCAL IMPACT:

There is no fiscal impact on the State of Michigan from a regulatory standpoint. However, the number of civil suits could be expected to rise as a result of this bill, creating additional expenditures and revenues of indeterminate amounts for the Circuit Courts in Michigan. Appellate and Supreme Court expenditures and revenues may also increase.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.