

NO-FAULT AUTO INSURANCE REVISIONS

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House Bill 4680 as introduced
Sponsor: Rep. Mark Meadows
Committee: Judiciary

Complete to 4-1-09

A SUMMARY OF HOUSE BILL 4680 AS REPORTED FROM COMMITTEE 3-25-09

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 an important 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.
- Apply the changes made by the bill to cases currently pending in the trial court or appellate court as of the bill's effective date, as well as to cases filed on or after the effective date.

House Bill 4680 would amend the Insurance Code (MCL 500.3135) to make several significant changes to the no-fault automobile insurance 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 an important body function or permanent serious disfigurement are questions of law for the court if there is no genuine issue as to any material fact. Further, the bill would add that if there is a genuine issue as to any material fact, the issues of whether an injured person suffered serious impairment

of an important body function or permanent serious disfigurement are questions of fact for the jury.

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 exception would remain.

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 as "serious impairment of an important body function" and define it to mean:

An objectively manifested injury or impairment that affects, or did affect the injured person's ability (rather than "general ability") to live (rather than "lead) his or her normal life. (Changes are underlined.)

Further, the bill would add that serious impairment of an important body function does not require proof that the injury or impairment or its effect met either of the following:

- Is or was permanent, severe, extensive, or pervasive or lasted for a significant period of time.
- Altered the course or trajectory of the injured person's life; caused the person to be generally, or for the most part, unable to live his or her normal life; caused the injured person's life to be substantially different after the injury than it was before; or that the body function in question is essential or indispensable to sustaining or living a normal life.

Applicability. Changes made to the act by House Bill 4680 would apply to cases pending in the trial court or appellate court on the bill's effective date and to cases filed on or after the bill's effective date.

FISCAL IMPACT:

House Bill 4680 would have an indeterminate fiscal impact on the judiciary. Any fiscal impact would be related to the increase in civil case filings to recover for pain and suffering damages under the lower threshold created by the bill. There would be no regulatory impact on the Office of Financial and Insurance Regulation.

BACKGROUND INFORMATION:

Last session, legislation that was similar, but broader in scope, was passed by the House but failed to be acted upon by the Senate. In addition to revising the definition of "serious impairment of body function," House Bill 4301 would also have established

factors to be used in determining whether a person's ability to lead a normal life had been affected at any point in time; allowed an injured person to sue for loss of earning capacity; required insurers to reimburse an injured person for certain kinds of payments the injured person had to make; and specified that the change in definition and use of criteria to determine serious impairment of body function was "curative and intended to correct a misinterpretation of law and legislative intent" occurring in a Michigan Supreme Court decision.

POSITIONS:

Representatives of the following organizations testified in support of, or otherwise indicated support for, the bill on 3-25-09:

CPAN (Coalition Protecting Auto No-Fault)
The Negligence Law Section of the State Bar of Michigan
Michigan Association of Justice
Mothers Against Drunk Drivers (MADD)
Michigan Brain Injury Providers Council
UAW
Eisenhower Center
Brain Injury Association of Michigan
Michigan Association of Physician Assistants
Michigan Orthopaedic Society
Michigan Assisted Living Association
Hope Network
Michigan Osteopathic Association
The Michigan Association of Chiropractors as a CPAN member

The following organizations testified in opposition, or otherwise indicated opposition, to the bill:

The Property Casualty Insurance Association of America
Insurance Institute of Michigan
Michigan Chamber of Commerce
Michigan Association of Insurance Agents
Farmers Insurance
Michigan Insurance Coalition

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Ben Gielczyk
Mark Wolf

■ 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.