SYNOPSIS OF MICHIGAN NO-FAULT LAW

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I. MCL 500.3101 – MANDATORY INSURANCE

A. MCL 500.3101(1) – Security for Payment of Benefits

(1) "The owner or registrant of a motor vehicle required to be registered in [Michigan] shall maintain security for payment of benefits under personal protection insurance, property protection insurance, and residual liability insurance. Security shall only be required to be in effect during the period the motor vehicle is driven or moved upon a highway."

(2)(g) An "owner" means: (i) a person renting or having the use of a motor vehicle for a period that is greater than 30 days; (ii) a person who holds the legal title to a vehicle, other that a person engaged in the business of leasing motor vehicles as a lessor pursuant to a lease providing for the use of the motor vehicle by the lessee for a period that is greater than 30 days; or (iii) a person who has the immediate right of possession of a motor vehicle under an installment sales contract.

Comments

In *Clevenger v. Allstate Ins.*, 443 Mich. 646 (1993), the Michigan Supreme Court held that the insurer of the insured vehicle owner, who had just sold the motor vehicle to her nephew but had left her license plates on the motor vehicle, remained liable as to the seller as the named insured and to the buyer as a permissive driver. The insurance policy did not require the named insured to have legal title to the vehicle, nor did it terminate coverage upon a transfer of title. Because the insured voluntarily remained the registrant of the vehicle, the court presumed that she complied with the statutory duty to insure it during the brief period she permitted the new owner to operate it on a public highway.

In *Twichel v. MIC Gen. Ins. Corp.*, 469 Mich. 524 (2004), the Michigan Supreme Court held that the purchaser of a truck was the "owner" under MCL 500.3101(2)(g)(i), even though the purchaser had paid only half of the sale price, title had not transferred, and the motor vehicle was not used for a 30-day period before the accident. Because the arrangement contemplated a permanent transfer of ownership, and that the purchaser would have exclusive use of the truck, the buyer was barred from PIP benefits as the owner of an uninsured motor vehicle.

II. MCL 500.3105 and MCL 500.3145 – Personal Protection Insurance

A. MCL 500.3105 – Personal Protection Benefits

(1) "Under personal protection insurance an insurer is liable to pay benefits for accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle."

(2) Personal protection insurance benefits are due "without regard to fault."

(4) A bodily injury is accidental *unless* the injury was caused or suffered intentionally by the claimant. A claimant does not cause or suffer an injury intentionally, even if he knows the accident is substantially certain to occur, if he acts to avert injury.

Comments

In *Morosini v. Citizens Ins. Co.*, 461 Mich. 303 (1999), the Michigan Supreme Court held that personal protection insurance does not cover bodily injury suffered from a physical assault in the aftermath of a minor vehicle collision. Further, bodily injury suffered in connection with a physical assault from a carjacking, robbery, or other assault inside a motor vehicle is not considered a bodily injury "arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle." However, an insured who is intentionally run over or struck by a driver would arguably be entitled to personal protection insurance benefits, for the motor vehicle is the instrumentality of the injury, rather than merely the *situs* of the injury; the focus is on the relationship between the injury and the use of the vehicle as a vehicle to commit the injury.

Using a motor vehicle as a ladder, stepstool, or other similar device would not be considered use of a motor vehicle as a motor vehicle.

In *Amerisure Ins. Co. v. Auto-Owners Ins. Co.*, 262 Mich. App. 10 (2004), the Michigan Court of Appeals found that in determining whether an insured acted intentionally and thus would be unable to collect personal protection insurance benefits, one must find that the insured intended the act that caused the injury and that he intended the injury itself. "[T]he finder of fact must focus on the person's subjective intent."

B. MCL 500.3145(1) – Statute of Limitations

(1) An action for recovery of personal protection insurance benefits must commence within one year after the date of the accident, unless written notice of the injury is given to the insurer within one year after the date of the accident or unless the insurer previously paid out personal protection insurance benefits for the injury. If the insurer receives notice or makes a payment, the injured party may commence an action any time within one year after the most recent incurrence of an allowable expense, a work loss, or a survivor's loss. The claimant may not recover benefits for any loss incurred more than one year before the action's commencement date. The claimant must provide notice with his name and address and the time, place, and nature of his injury.

Comments

In *Devillers v. Auto Club Ins. Ass'n*, 473 Mich. 562 (2005), the Michigan Supreme Court held that the provision prohibiting recovery of no-fault benefits for any portion of the loss incurred more than one year before commencement of the action is not subject to judicial tolling from the date an expense is presented to the insurer until its denial, abrogating *Richards v. American Fellowship Ins. Co.*, 84 Mich. App. 629 (1978), and overruling *Lewis v. DAIIE*, 426 Mich. 93 (1986). The Michigan Supreme Court held that *Lewis* and its progeny clearly violate the plain language of MCL 500.3145 and thus overruled its application.

In *Amerisure Cos. v. State Farm Mut. Auto. Ins. Co.*, 222 Mich. App. 97 (1997), the Court of Appeals held that the one-year statute of limitations applied to Amerisure's claim as a subrogee of the insured, since it had no greater rights than the insured. Amerisure had filed for subrogation, claiming that it mistakenly paid out PIP benefits to one of Amerisure's insured. The court held that in seeking the recovery of PIP benefits, although the benefits were paid mistakenly, the recovery action was in the form of a subrogation claim and thus subject to the PIP statute of limitations.

In *Titan Ins. Co. v. Farmers Ins. Exch.*, 241 Mich. App. 258 (2000), the Court of Appeals distinguished its decision from that in *Amerisure* and applied the traditional six-year statute of limitations, rather than the PIP one-year statute of limitations. Titan paid PIP benefits to insureds injured in a motor vehicle accident and sought to recoup benefits paid from a second insurer who was at the same order of priority under MCL 500.3115(2). Because Titan sought reimbursement "not as a subrogee of an insured, but independently, pursuant to a statutory right to reimbursement," the one-year statute of limitations under MCL 500.3145 did not apply.

III. MCL 500.3106 – PARKED VEHICLES

A. MCL 500.3106(1) – Unreasonably Parked Vehicles

(1) "Accidental bodily injury does not arise out of the ownership, operation, maintenance, or use of a parked vehicle as a motor vehicle unless any of the following occur:"

(a) "The vehicle was parked in such a way as to cause unreasonable risk of the bodily injury which occurred."

Comments

Parking a vehicle in a no-parking zone or parking on the shoulder of a highway for a purpose not allowed by or in violation of a statute does not by itself create an unreasonable risk of bodily injury. Whether an unreasonable risk has been created is determined based on the manner in which the motor vehicle is parked, not on whether a particular parking violation is involved. *Autry v. Allstate Ins. Co.*, 130 Mich. App. 585 (1983); *United Southern Assur. Co. v. Aetna Life & Cas. Ins. Co.*, 189 Mich. App. 485 (1991); *Wills v. State Farm Ins. Co.*, 437 Mich. 205 (1991).

"Factors such as the manner, location, and fashion in which a vehicle is parked are material to determining whether the parked vehicle poses an unreasonable risk." *Stewart v. State*, 471 Mich. 692 (2004).

A vehicle parked so that its rear corner protrudes into traffic further than other parked vehicles may be unreasonably parked. However, a prudently parked vehicle that is out of the flow of traffic is not unreasonably parked. *Wills v. State Farm Ins. Co.*, 437 Mich. 205 (1991). Vehicles stopped in traffic are not parked vehicles.

(b) Except as covered by workers' compensation, "the injury was a direct result of physical contact with equipment permanently mounted on the vehicle, while the equipment was being operated or used, or property being lifted onto or lowered from the vehicle in the loading or unloading process."

Comments

This section typically covers situations in which a cherry picker is mounted on the back of a truck, there is a lift gate, etc. However, an injury sustained while in contact with a passenger door on a vehicle is not contact with equipment permanently mounted on the vehicle, but with "the vehicle itself." *Frazier v Allstate Ins. Co.,* 490 Mich 381, 386 (2011). A passerby's injuries from escaping engine steam would not be the result of direct contact with permanent equipment and thus precludes no-fault recovery. *McMullen v. Motors Ins. Co.*, 203 Mich. App. 102 (1993).

(c) Except as covered by workers' compensation, "the injury was sustained by a person while occupying, entering into, or alighting from the vehicle."

Comments

For individuals "entering into or alighting from the vehicle," the initial focus is on whether the person had some physical contact with the vehicle at the time of the injury or whether he had finished his movement safely before suffering an injury.

To recover, the individual must sustain an injury from the use of a motor vehicle as a motor vehicle. The injury must have a causal relationship to a motor vehicle that is more than incidental, fortuitous, or but for; there must be a sufficiently close nexus between the injury and use of vehicle as motor vehicle. A claimant with one leg in and one leg out of a motor vehicle in the course of getting into the motor vehicle was "entering" the motor vehicle. The necessary causal relationship was met by evidence that the act of shifting weight onto one leg created the precarious position that precipitated the slip and fall on ice. *Putkamer v. Transamerica Ins. Corp. of America*, 454 Mich. 626, 636 (1997). An injury sustained while sleeping in a camper did not occur while the motor vehicle was being used as a motor vehicle but rather occurred while it was being used as sleep accommodations. *McKenzie v. Auto Club Ins. Ass'n*, 458 Mich. 214 (1998).

B. MCL 500.3106(2) – Course of Employment Parked Vehicles

(2) "Accidental bodily injury does not arise out of the ownership, operation, maintenance, or use of a parked vehicle as a motor vehicle" if benefits are available under workers' compensation to an employee who suffers an injury during the course of his employment while doing either:

(a) "Loading, unloading, or doing mechanical work on a vehicle unless the injury arose from the use or operation of another vehicle. . . '[A]nother vehicle' does not include a motor vehicle being loaded on, unloaded from, or secured to, as cargo or freight, a motor vehicle."

(b) "Entering into or alighting from the vehicle unless the injury was sustained while entering into or alighting from the vehicle immediately after the vehicle became disabled. This subdivision shall not apply if the injury arose from the use or operation of another vehicle."

IV. MCL 500.3107 – ALLOWABLE EXPENSES, WORK LOSS, AND ATTENDANT CARE

A. Introduction – Questions to Consider

1. Does coverage exist for the type of accidental bodily injury incurred?

2. Is there any exclusion that precludes the claimant from obtaining no-fault benefits?

3. Who are the no-fault insurers and which ones should pay?

4. Which benefits and what amounts are recoverable from the no-fault insurer(s)?

5. With respect to no-fault benefits that are payable to the claimant, are there any reductions, setoffs, or reimbursements permitted by law?

B. MCL 500.3107(1)(a) – Allowable Expenses

(1)(a) This section provides for the allowable expenses payable from personal protection insurance. This includes "all reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person's care, recovery or rehabilitation." Allowable expenses "shall not include charges for a hospital room in excess of a reasonable and customary charge . . . except if the injured person requires special or intensive care," and funeral expenses in the insurance policy "shall not be less than $1,750.00 or more than $5,000.00."

Comments

To be allowable, the expense must be (1) a reasonable amount, (2) actually incurred, and (3) reasonably necessary for care, recovery, or rehabilitation. *See Advocacy Organization for Patients & Providers v. Auto Club Ins. Ass'n*, 257 Mich. App. 365 (2003).

Both reasonableness and necessity of medical expenses are required for the insured to receive benefits under personal protection insurance, and a lack of these elements is a valid defense by the insurer to liability. In fact, it is possible that none of an insured's medical expenses were reasonable or necessary, and thus the insurer would face no liability. *Nasser v. Auto Club Ins. Ass'n*, 435 Mich. 33 (1990). In addition, PIP benefits will be denied if the insured has only planned future expenses but has not yet become liable or incurred them. *Proudfoot v. State Farm Mut. Ins. Co.*, 469 Mich. 476 (2003).

The issue of whether a medical expense is reasonably necessary is generally a question of fact for the jury, and the burden of proof is on the insured. *Nelson v. DAIIE*, 137 Mich. App. 226 (1984); *Owens v. Auto Club Ins. Ass'n*, 444 Mich. 314 (1993).

The charge of the allowable expense cannot exceed the customary amount for similar products, services, and accommodations; the insurer is liable only for the reasonable charge for a product or service, not for the full amount billed. **Caveat:** An insurer that pays the reasonable but not entire amount for services would still be required to defend and indemnify the insured if they were sued by the service providers for the unpaid balance. *McGill v. Automobile Ass'n of MI*, 207 Mich. App. 402 (1994).

In general, some allowable expenses are:

(1) Hospital and doctor services;

Although an insurer may provide managed care health care options, the insurer may not limit the insured's medical options through managed care, because the no-fault act allows for the insured's choice of medical providers. *Michigan Chiropractic Council v. Commissioner of the Office of Fin. & Ins. Svcs.*, 262 Mich. App. 228 (2004).

(2) Medicine;
(3) Orthopedic and prosthetic devices;
(4) Other medically necessary equipment;
(5) Nursing, aid, or similar services other than replacement care services;

Private nursing services constitute allowable expenses if they are reasonably necessary for the insured's home care. *Green v. Federal Kemper Ins. Co.*, 88 Mich. App. 364 (1979). *See also Manley v. DAIIE*, 425 Mich. 140 (1986).

Normally, an insurer requires a doctor's disability prescription before paying out on any medical nursing/aide care claim; however, the No-Fault Act has no such mandate in regard to allowable expenses. A disability slip would appear to be an issue of whether the services being provided are reasonably necessary.

Nursing and other similar medical services performed by family members are compensable at reasonable market costs. Nursing services provided by the disabled claimant's family member, including feeding, bathing, exercising, medicating, and assisting the claimant, were deemed allowable expenses. *Van Marter v. American Fidelity Fire Ins. Co.*, 114 Mich. App. 171 (1982).

Spouses and other family members may perform attendant care services and be compensated for their reasonable value. Attorney Gen. Op. #6155 (June 21, 1983). An insurer failed in its defense that attendant care services performed by the claimant's parents were not incurred because the claimant had not directly billed her parents; the court refused to create such a requirement and left it to the jury to determine the reasonable value of the services performed. *Booth v. Auto Owners Ins. Co.*, 224 Mich. App. 724 (1997). *See also Sharp v. Preferred Risk Mut. Ins. Co.*, 142 Mich. App. 499 (1985).

(6) Modifications to homes that are reasonably necessary for care, recovery, or rehabilitation;

An $88,000 addition to the home of the claimant's parents to improve its handicap accessibility, along with an apartment rental for the claimant during the construction, were deemed allowable expenses. *Sharp v. Preferred Risk Mut. Ins. Co.*, 142 Mich. App. 499 (1985). Modifications to a home to adjust for the special needs of the claimant were an allowable expense. *Manley v. DAIIE*, 425 Mich. 140 (1986).

The insurer and the insured collectively purchased real estate to build a home to meet the special needs of a six-year-old girl rendered quadriplegic from an auto accident. Title to the home was held in a trust for the claimant during her lifetime. The parties paid taxes and insurance pro rata according to their respective contributions to the home purchase. The parents would live with the claimant and pay maintenance and utilities until deceased, at which point the insurer would take over payments. The court held that the payments by the parents were an allowable expense, equating these payments to rent for special housing accommodations. *Kitchen v. State Farm Ins. Co.*, 202 Mich. App. 55 (1993).

It must be noted, however, that home modification expenses must be actually incurred by the insured, and the insured must be liable for the expenses to be covered by no-fault benefits; planning for future home modification is not enough to have incurred these expenses. *Proudfoot v. State Farm Mut. Ins. Co.*, 469 Mich. 476 (2003).

In addition, the insurer is entitled to take a security interest in a new home built to accommodate the paralyzed insured; this enables the insurer to recoup the funds expended. *Payne v. Farm Bureau Ins.*, 263 Mich. App. 521 (2004).

(7) Food and housing expenses incurred in an institutional setting;

The Court of Appeals held that the claimant could recover rent, board, and living expenses as allowable rehabilitation expenses; the expenses were incurred during a vocational training program that required the claimant to spend time away from home. *Tennant v. State Farm Mut. Auto. Ins. Co.*, 143 Mich. App. 419 (1985).

However, the Michigan Supreme Court has held that ordinary, everyday food expenses incurred in the home setting were not allowable expenses because they were not necessary to the claimant's care based on the injuries involved. An insurer would be liable for food only if it met the definition of an allowable expense. *Griffith v. State Farm Mut. Auto. Ins. Co.*, 472 Mich. 521 (2005).

(8) Rehabilitation expenses;

The term "rehabilitation" includes physical, mental, vocational, and occupational rehabilitation. The Michigan Supreme Court has defined rehabilitation as "to bring an [injured person] to a condition of health or ability sufficient to resume his pre-injury life." *Griffith, supra*, 472 Mich. 534-535.

The Court of Appeals held that after an accident rendered the plaintiff physically unable to perform his job, he was entitled to the cost of reasonably necessary vocational rehabilitation as an allowable expense. *Bailey v. DAIIE*, 143 Mich. App. 223 (1985). Similarly, the Court of Appeals awarded rehabilitation expenses, including tuition, room, and board at a full time, out-of-state electronic school, to enable the claimant to pursue a meaningful career. *Tennant v. State Farm Mut. Auto. Ins. Co.*, 143 Mich. App. 419 (1985). *See also Kondratek v. Auto Club Ins. Ass'n*, 163 Mich. App. 634 (1987) (allowing recovery of tuition and expenses as vocational rehabilitation expenses for a college program in sign language and interpretation). However, the Court of Appeals has denied rehabilitation expense reimbursement when the insured has been able to maintain essentially the same career following an accident. *Maxwell v. Citizens Ins. Co. of America*, 245 Mich. App. 477 (2001).

(9) Mileage and transportation.

Medical mileage may be premised on state travel reimbursement rates. Atty. Gen. Op. # 5990 (Oct. 2, 1981).

The Court of Appeals held that reasonable and necessary transportation expenses incurred to obtain medical treatment are recoverable as an allowable expense. *Swantek v. Automobile Club of Mich. Ins. Group*, 118 Mich. App. 807 (1982). Although travel expenses for medical treatment are recoverable, the insurer lacks any duty to create a formula or method to calculate travel expense reimbursement rates or costs. *Neumann v. State Farm Mut. Auto. Ins. Co.*, 180 Mich. App. 479 (1989).

C. MCL 500.3107(1)(b) – Work Loss

(1)(b) This section provides for work loss payable from personal protection insurance. Work loss consists of "loss of income from work an injured person would have performed during the first 3 years after the date of the accident if he or she had not been injured." Work loss is not recoverable after the insured dies. Work loss received is not taxable income, and thus the insured may only receive 85% of wages, "unless the claimant presents to the insurer in support of his or her claim reasonable proof of a lower value of the income tax advantage in his or her case." "[T]he benefits payable for work loss sustained in a single 30-day period and the income earned by an injured person for work during the same period" is adjusted annually to reflect the changes in the cost of living.

Comments

(1) General;

The date of the accident fixes the amount of the statutory maximum applicable to that particular claimant. For October 1, 2013 through September 30, 2016, the statutory monthly maximum was $5398.00. For October 1, 2016 through September 30, 2017, the statutory monthly maximum is $5,452.00. The 15% maximum reduction for taxes is applied to the claimant's actual wages. *Featherly v. AAA Ins. Co.*, 199 Mich. App. 132 (1982).

Work loss benefits compensate an injured person for work he would have performed during the first three as if the person had never been injured and what he would have received but for the accident. *MacDonald v. State Farm Mut. Ins. Co.*, 419 Mich. 146 (1984). The insured has the burden of proof to demonstrate the actual loss of earnings because of the accident. *Sullivan v. North River Ins. Co.*, 238 Mich. App. 433 (1999).

The work loss must be related to the injuries suffered from the accident. For instance, the plaintiff suffered a disabling heart attack two weeks after suffering neck and shoulder injuries in an accident; the court deemed the heart attack an intervening cause of disability that cut off the plaintiff's right to work loss benefits. *MacDonald v. State Farm Mut. Ins. Co.*, 419 Mich. 146 (1984). Similarly, the Court of Appeals held that the plaintiff failed to prove by a preponderance of the evidence that his heart attack two months after his traffic accident was related to the accident, precluding work loss recovery. *Kochoian v. Allstate Ins. Co.*, 168 Mich. App. 1 (1988).

Incarcerated individuals are not entitled to work loss benefits during the period of their incarceration. *Smith v. League General Ins. Co.*, 143 Mich. App. 112, *rev'd* 424 Mich. 893 (1986); *Luberda v. Farm Bureau General Ins. Co.*, 163 Mich. App. 457 (1987).

(2) Items that may be considered part of work loss;

COLA raises, step-wage increases in pay, and a profit-sharing plan that was part of the employee's regular wages are recoverable work loss benefits; however, profit sharing payments, employer pension contributions, social security taxes, health care insurance premiums, and fringe benefits in lieu of salary are not recoverable. *Farquharson v. Travelers Ins. Co.*, 121 Mich. App. 766 (1982); *Krawczyk v. DAIIE*, 418 Mich. 231 (1983).

The "would have performed" language regarding recoverable work loss requires consideration of past employment, employment at the time of the accident, and future employment plans in determining the work loss caused by the accident. One court raised the work loss amount based on the plaintiff's demonstration that he would have changed jobs and earned a higher income if not for the injury suffered. The plaintiff testified that he would have worked for a different employer if not for the injury, and this employer testified that the plaintiff would have worked for him for at least three years if not for the injury. *Kirksey v. Manitoba Public Ins. Corp.*, 191 Mich. App. 12 (1991).

Work loss benefits may extend beyond the insured's period of disability if the insured continues to lose income as a result of the accident. *Marquis v. Hartford Acc. & Indem.*, 444 Mich. 638 (1994).

(3) Work loss benefits payable and income earned for work during the same period shall not exceed the statutory maximum work loss benefits.
The Court of Appeals held that after the plaintiff returned to lighter duty work and less pay than his prior job, work loss benefits should be

calculated by subtracting the post-accident wages from what he would have earned before the accident. *Snellenberger v. Celina Mut. Ins. Co.*, 167 Mich. App. 83 (1988).

(4) Duty to mitigate;

The injured plaintiff has a duty to mitigate damages by seeking alternative employment. *Bak v. Citizens Ins. Co. of America*, 199 Mich. App. 730 (1993); *Marquis v. Hartford Acc. & Indem.*, 444 Mich. 638 (1994).

(5) Special situations; seasonal employees;

Self-employed individuals may recover lost profits as work loss: "[W]ork loss includes not only lost wages, but also lost profit which is attributable to personal effort and self-employment." *Kirksey v. Manitoba Public Ins. Corp.*, 191 Mich. App. 12 (1991).

Self-employed claimants may present difficulties in computing their income. In general, self-employed claimants face substantial business costs. The issue is what costs must be subtracted from gross income to determine actual net income for work loss purposes. In one case, a self-employed plaintiff worked as an independent contractor, paying for all of his business expenses. The Court of Appeals held that the 15% deduction is taken from *net* income, not gross income:

> [P]laintiff's business expenses should be deducted from his gross receipts in determining his lost income. The goal of the no-fault act is to place individuals in the same, but no better position than they were before their automobile accident. Certainly, plaintiff cannot claim that his actual expendable income included even that income which he was required to pay out as business expenses. *Adams v. Auto Club Ins. Ass'n*, 154 Mich. App. 186 (1986).

One court held that a self-employed plaintiff's income tax returns displaying business income for the prior 7.8 weeks was insufficient to establish his work loss, especially since some items on the tax return were not apportioned over the year. *Brown v. Fireman's Fund Ins. Co.*, 485 F. Supp. 494 (E.D. Mich. 1980).

The Supreme Court held that the sole shareholder of a Subchapter S Corporation who paid himself wages as reflected on a W2 form was entitled to work loss based on his wages regardless of the fact that the corporation was operating at a loss, because the law treats a corporation

and its sole shareholder as distinct entities, and there was no evidence that the claimant's remuneration was based on gross receipts of the corporation. *Ross v. ACIA*, 481 Mich. 1 (2008), distinguishing *Adams, supra.*

In regards to the collection of work loss benefits for teachers, who generally do not work during the summer months, teachers may collect work loss benefits during the summer months if they would have collected wages during those months. *Copus v Meemic Ins Co*, 291 Mich App 593 (2011), lv den 489 Mich 975 (2011).

(6) Unemployment;

An insured who is temporarily unemployed at the time of the accident shall receive benefits based on the income earned the last full month of full-time employment prior to the accident. MCL 500.3107a.

Circumstances may arise in which a work loss recipient is fired from his job for reasons unrelated to the motor vehicle accident. Although no case exists directly on point, the existing case law suggests that the plaintiff would be entitled to work loss benefits regardless of the reasons for his employment termination. As an aside, the Michigan Supreme Court held that work loss benefits are meant to compensate the insured for income he would have received "but for" the accident, and the plaintiff has the burden of proving that he would have been employed "but for" the accident. *McDonald v. State Farm Mut. Ins. Co.*, 419 Mich. 146 (1984).

Cases favoring work loss benefits for terminated workers

In one case, the plaintiff was fired for absenteeism two months before his accident and had received no job offers from other employers. The Court of Appeals found the plaintiff to be temporarily unemployed and thus entitled to work loss benefits. The court noted the lack of statutory language excluding this class, finding that work loss benefits were not meant only for those unemployed because of seasonal employment or layoffs. *Szabo v. DAIIE*, 136 Mich. App. 9 (1984).

After the plaintiff was injured in an accident, his physician consulted that he could return to work, but the plaintiff's employer had already replaced him. The Court of Appeals found that the plaintiff was entitled to work loss benefits because the job loss came as a result of the accident injuries. *Nawrocki v. Hawkeye Sec. Ins. Co.*, 83 Mich. App. 135 (1978).

After a hand injury during an accident prevented the plaintiff from returning to work, the insurer stopped work loss benefits following the closure of the plaintiff's prior work facility. The court held that the

plaintiff was entitled to wage loss benefits despite the plant's closure and temporary unemployment. *O'Neal v. Allstate Ins. Co.*, 176 Mich. App. 390 (1989).

Work loss benefits do not depend on the insured's employment on the date of the accident, if the insured can prove that he would have had other, better employment had he not been injured in the accident. *Sullivan v. North River Ins. Co.*, 238 Mich. App. 433 (1999).

Cases opposing work loss benefits for terminated workers

The injured plaintiff was charged with and convicted of negligent homicide, and the court held that the insurer need not pay work loss benefits during the period of incarceration. *Luberda v. Farm Bureau General Ins. Co.*, 163 Mich. App. 457 (1987).

The plaintiff was unemployed for four years and began sending out resumes about four months before his accident. The court held that the insurer did not have to pay work loss benefits. *Frazier v. Allstate Ins. Co.*, 231 Mich. App. 172 (1998). Similarly, the plaintiff was unemployed for four years before his accident but testified that he had intended to find employment; the court denied work loss benefits. *Oikarinen v. Farm Bureau Mut. Ins. Co. of Mich.*, 101 Mich. App. 436 (1980).

D. MCL 500.3107(1)(c) – Personal/Replacement Services

(1)(c) This section provides for personal services payable from personal protection insurance. The expenses for personal services may not exceed $20 per day and must be reasonable and necessary services that the injured individual would have performed for himself or a dependent if not for the accident. The individual may recover these benefits for up to three years following the date of the accident. These benefits compensate the plaintiff for services that he can no longer perform due to the accident. **These benefits differ from and are in addition to the allowable expenses under MCL 500.3107(1)(a).**

Comments

These replacement services include lawn maintenance, cooking, snow shoveling, housekeeping, laundry, babysitting, household repairs, vehicle repairs, etc.

Replacement services differ from medical, nursing, and attendant care services that are reimbursable under MCL 500.3107(1)(a) as an allowable expense. The latter are expenses incurred for care, for recovery and rehabilitation from, accident-related injuries. *Douglas v. Allstate*, 492 Mich. 241, 262 (2012). Cooking and maintaining a checkbook are

replacement services because they are services the injured party would have performed for his own benefit or the benefit of his dependents had the accident not occurred. *Douglas*, 492 Mich 261 (the service is of a type that a family member might perform for the benefit of the household as a whole).

Replacement services must be reasonably incurred, yet courts tend to have rather lax requirements in proving this element. For instance, an oral or implied agreement between family members to provide replacement services has been enough to prove they were reasonably incurred. *Youmans v. Citizens Ins. Co. of America*, 89 Mich. App. 387 (1979). Similarly, a replacement services ledger along with an agreement satisfied the reasonably incurred requirement. *Fortier v. Aetna Cas. & Sur. Co.*, 131 Mich. App. 784 (1984).

Replacement service benefits have been denied on occasion. In one instance, the court held that the plaintiff failed to establish that an agreement for replacement services had been entered into, and she only estimated the amount of services provided. The statute states that the expenses must be "incurred," which "justifies recovery to the extent of amounts expended or for which one has become liable." *Adkins v. Auto Owners Ins. Co.*, 105 Mich. App. 431 (1981).

Similarly, a court denied the plaintiff's claim for replacement services after admitting that he had not paid any relatives for their provision of services; further, the plaintiff failed to prove that he expended any money or incurred any liability for replacement services. *Schaible v. Mich. Mut. Ins. Co.*, 116 Mich. App. 116 (1982).

The maximum recovery is $20 per day, regardless of how many people perform replacement services, and the maximum duration is three years. Most insurance carriers require a disability slip from a medical provider during the replacement services period, but the statute does not specifically require such a slip. As a matter of proof, most plaintiffs provide a disability slip. However, a question of fact might arise as to whether replacement services were recoverable absent a disability slip if the jury believed the evidence demonstrated the necessity for replacement services.

The phrase "not for income" excludes receiving replacement service benefits for activities that are income or profit motivated, like a grocer hiring a worker to stock shelves or a foster care proprietor hiring an employee at $20 a day. *Lewis v. DAIIE*, 90 Mich. App. 251 (1979); *Kerby v. Auto Owners Ins. Co.*, 187 Mich. App. 552 (1991).

V. MCL 500.3109 – GOVERNMENTAL BENEFIT SETOFFS

A. Introduction

The variety of benefits provided by the government and variety of case law interpreting particular benefits prohibits an extensive discussion here of the extent and type of benefits that can be setoff under MCL 500.3109. In handling a no-fault claim, one must remember the no-fault goal: assure prompt payment to the injured person to make the person whole and keep insurance costs affordable and reasonable.

Generally, setoffs of governmental benefits by the no-fault carrier are permissible only in cases where the no-fault benefits would duplicate governmental benefits pursuant to MCL 500.3109.

B. MCL 500.3109(1) – Setoff of Government Benefits

(1) This section states that state and federal government benefits are to be subtracted from personal protection insurance benefits due to the insured.

Comments

The test to determine whether a state or federal benefit must be offset from PIP benefits is (1) the government benefits serve the same purpose as the no-fault benefits and (2) the government benefits are provided or required to be provided as a result of the same accident. This eliminates duplicative benefits. Government benefits that have no relationship to the accident need not be set off from no-fault PIP benefits. *Jarosz v. DAIIE*, 418 Mich. 565 (1984).

Insurer could setoff Social Security benefits from no-fault benefits because they were required to be provided as a result of the accident. *Popma v. Auto Club Ins. Ass'n*, 446 Mich. 460 (1994); *Wolford v. Travelers Ins. Co.*, 92 Mich. App. 600 (1979).

In general, a no-fault insurer may setoff workers' compensation benefits from PIP benefits stemming from an employment-related automobile accident. *Mathis v. Interstate Motor Freight System*, 408 Mich. 164 (1980).

Social Security retirement benefits and similar benefits due to age cannot be setoff because they do not serve the same purpose as no-fault benefits and are not provided or required to be provided as the result of an accident. *Jarosz v. DAIIE*, 418 Mich. 565 (1984).

According to a federal provision, Medicare benefits are only paid if no-fault coverage is not available, thus precluding the need to setoff from no-fault benefits. Medicare benefits will not be paid to the extent that an item or service will be covered by an automobile insurance plan. *John Hancock Property & Cas. Ins. Cos. v. Blue Cross & Blue Shield of Michigan*, 437 Mich. 368 (1991).

Medicaid benefits are not subject to setoff because they are payable only to the medically indigent. A person is not medically indigent if he has no-fault insurance coverage. *Workman v. DAIIE*, 404 Mich. 477 (1979); *Johnson v. Michigan Mutual Ins. Co.*, 180 Mich. App. 314 (1989). **Caveat:** To the extent that Medicaid benefits are paid, the Department of Social Services may recover via subrogation or reimbursement and can sue to recover the same. Thus, Medicaid may seek recovery from the no-fault insurer. *Workman v. DAIIE*, 404 Mich. 477 (1979); MCL 400.106.

Out-of-state insurance benefits provided under the laws of any state or the federal government can be setoff by the no-fault insurer. Medical benefits paid by the out-of-state carrier for the same accident could be offset by the Michigan no-fault carrier, but the no-fault carrier would be responsible for whatever benefits are required under Michigan no-fault law beyond the amount of medical benefits required to be paid by the out-of-state insurer. *DeMeglio v. Auto Club Ins. Ass'n*, 449 Mich. 33 (1995).

A workers' compensation redemption may be setoff against past and future wage loss benefits. The setoff is not limited to amounts allotted for future workers' compensation benefits. *Gregory v. Transamerica Ins. Co.*, 425 Mich. 625 (1986). This setoff is allowed for the full amount of payable benefits, even though the redemption was for less than the total of such payments. *James v. Allstate Ins. Co.*, 137 Mich. App. 222 (1984).

Other benefits that may be set off generally must be explored on a case-by-case basis, keeping in mind the *Jarosz* two-part test and applicable case law.

C. MCL 500.3109(3) – Deductible Coverage Provisions

(3) An insurer may offer, at reduced premium rates, a deductible of a specified amount. The deductible can apply to all or any of the PIP benefits that are payable to the person named in the policy, a spouse, or any relative of either of these who is domiciled in the same household.

VI. MCL 500.3109a – COORDINATION OF BENEFITS / OTHER HEALTH AND ACCIDENT COVERAGE

A. MCL 500.3109a

Insurers providing PIP benefits shall offer, at adjusted premium rates, deductibles and exclusions reasonably related to other health and accident coverage. The deductibles and exclusions shall be subject to prior approval from the commissioner and shall apply only to those named on the policy, his spouse, and any relative domiciled in the same household.

Comments

Coordinated coverage was designed to contain and reduce the cost of insurance. The insured elects whether to accept or reject coordinated coverage. Generally, an insured buys no-fault coverage only for those benefits that are not provided by his other health and accident insurance. Subject to certain exceptions, under coordinated coverage, the insured's other health and accident insurance takes the primary role while the no-fault insurance acts in the secondary position to cover what the primary insurance does not.

The phrase "other health and accident coverage" describes insurance other than no-fault. Thus, a no-fault carrier with a primary uncoordinated policy on an insured and a no-fault carrier with a secondary coordinated policy on the same insured cannot coordinate benefits. Instead, the no-fault carrier must split the liability of no-fault benefits. *Dep't of Social Services v. American Commercial Liability Ins. Co.*, 435 Mich. 508 (1990).

The general rule, subject to exceptions, is that the other health and accident coverage is the primary insurer, and the no-fault insurer is the secondary insurer, when there are competing coordination of benefits clauses. **Caveat:** An ERISA plan may preempt state law, because an unambiguous coordination of benefits clause in the ERISA plan must be given its plain meaning, despite the existence of a similar clause in the no-fault policy. *Auto Club Ins. Ass'n v. Frederick & Herrud, Inc.*, 443 Mich. 358 (1993). The Michigan Court of Appeals held that an ERISA plan did *not* preempt the no-fault policy where the ERISA plan was not self-funded but instead had purchased insurance coverage. *American Medical Security, Inc. v. Allstate Ins. Co.*, 235 Mich. App. 301 (1999).

Blue Cross and Blue Shield Plan Benefits could be coordinated with no-fault benefits under the No-Fault Act, despite Blue Cross and Blue Shield's argument that they were not insurers. The court held that the statutory language referred to other "coverage." *Nyquist v. Aetna Ins. Co.*, 84 Mich. App. 589 (1978). The Court of Appeals also held that

"coverage" is broader than "insurance." *Lewis v. Transamerica Ins. Corp. of America*, 160 Mich. App. 413 (1987).

An HMO plan constitutes other health and accident coverage with which the no-fault insurer coordinates benefits. *U.S. Fidelity & Guar. Co. v. Group Health Plan of Southeast Michigan*, 131 Mich. App. 268 (1983); *West Michigan Health Care Network v. Transamerica Ins. Corp. of America*, 167 Mich. App. 218 (1988); *Westfield Cos. v. Grand Valley Health Plan*, 224 Mich. App. 385 (1997). As to an HMO, a claimant must treat within his plan, with providers designated by the plan, unless he can show that the care he needs is not reasonably available within the plan. *Tousignant v. Allstate*, 444 Mich 301 (1998).

Michigan Conference of Teamsters Welfare Plan payments made for medical expenses on behalf of its union members, who also purchased coordinated no-fault coverage, constituted benefits paid pursuant to other health and accident coverage. *Lewis v. Transamerica Ins. Corp. of America*, 160 Mich. App. 413 (1987).

In general, the no-fault carrier will be secondary and the other health carrier will be primary. This may not apply for all ERISA plans. However, an unambiguous coordination of benefits clause is given its plain meaning, despite a similar clause in a no-fault insurance policy, because to hold otherwise would allow state regulation of an ERISA plan. *Auto Club Ins. Ass'n v. Frederick & Herrud, Inc.*, 443 Mich. 358 (1993) (*overruling Federal Kemper Ins. Co. v. Health Ins. Admin., Inc.*, 424 Mich. 537 (1986)).

Where there is a coordinated no-fault policy and the other health and accident coverage plan contains an exclusionary clause ("Michigan No-Fault Exclusion Benefits are not payable under this plan for injuries received in an accident involving a car or other motor vehicle"), the exclusion in the health care plan is valid, and the no-fault carrier was liable for the insured's medical expenses. *Auto Owners Ins. Co. v. Autodie Corp. Employee Benefit Plan*, 185 Mich. App. 472 (1990). An exclusionary clause is valid when the phrasing of an exclusion of coverage is stated absolutely in the other health and accident insurance policy without reference to other insurance and when the clause is not conditioned on the existence or non-existence of other insurance. A court held an exclusionary clause valid where the plan provided for payment for "injuries sustained in an automobile accident, in an amount not to exceed $5,000 per accident"; the no-fault carrier had to pay medical expenses in excess of $5,000, regardless of a coordinated policy provision. *Transamerica Ins. Co. of America v. IBA Health and Life Assur. Co.*, 190 Mich. App. 190 (1991). The Court of Appeals reached the same conclusion when the ERISA plan was self-insured, and the exclusionary

provision stated, "Michigan No-Fault Exclusion-Benefits are not payable under this plan for injuries received in an accident involving a car or other motor vehicle." *Wolverine Mut. Ins. Co. v. Rospatch Corp. Employee Ben. Plan*, 195 Mich. App. 302 (1992).

When a coordinated no-fault policy is present, sickness and accident benefits substituting for work loss obtained from another non-no-fault health and accident carrier are deducted from the statutory maximum rather than the plaintiff's actual wage loss if the loss of income exceeds the statutory maximum. *Zmudczynski v. League Gen. Ins. Co.*, 99 Mich. App. 442 (1980).

In calculating the work loss benefits payable, one applies a 15% tax adjustment (from MCL 500.3107(1)(b)) to the insured's actual loss of income before application of the statutory maximum limitation on benefits payable. *Featherly v. AAA Ins. Co.*, 119 Mich. App. 132 (1982).

Government benefits duplicating work loss benefits from a state or federal government are deducted from the statutory maximum if the wage loss, after the 15% tax adjustment, would exceed the statutory maximum. If the wage loss after the adjustment does not exceed the maximum, then the duplicate benefits would be deducted from the amount of the wage loss. For example, the statutory wage loss maximum per month was $4,027 from October 1, 2001, though September 30, 2002. If the claimant made $6,000 in a 30-day period, the 15% reduction would yield $5,100. If the claimant received workers' compensation benefits as a duplicative benefit, and the amount received was $300, the no-fault carrier could deduct $300 and create a maximum wage loss payable of $3,727. Further, if the no-fault policy was coordinated, and the claimant received sickness and accident benefits of $500, the no-fault carrier could deduct $500 and create a maximum wage loss payable of $3,227. However, if after the 15% tax adjustment the claimant's wage loss was below $4,027, say $3,000, then the $300 and $500 benefits would be subtracted from the $3,000 to yield a $2,200 no-fault work loss benefit. *Snellenberger v. Celina Mut. Ins. Co.*, 167 Mich. App. 83 (1988).

VII. MCL 500.3113 – PERSONS NOT ENTITLED TO PERSONAL PROTECTION INSURANCE BENEFITS

A. MCL 500.3113(a) – Unlawful Use

(a) A person is not entitled to PIP benefits for accidental bodily injuries if the person was using a motor vehicle that he had unlawfully taken, unless the person reasonably believed that he was entitled to take and use the vehicle.

Comments

A thief is not entitled to PIP benefits.

The lack of a driver's license or use beyond the scope of the permission granted does not necessarily disqualify the person from PIP benefits. *Bronson Methodist Hosp. v. Forshee*, 198 Mich. App. 617 (1993); *State Farm Mut. Auto. Ins. Co. v. Hawkeye-Security Ins. Co.*, 115 Mich. App. 675 (1982).

An unlicensed, intoxicated driver who had taken a vehicle unlawfully, but reasonably believed she had permission to use the vehicle, could not reasonably believe she was entitled to use the vehicle, in light of her intoxication and lack of a driver's license. *Amerisure Ins Co v. Plumb*, 282 Mich. App. 417 (2009), *lv den* 485 Mich. 909 (2009).

B. MCL 500.3113(b) – Uninsured Owner/Registrant

(b) A person is not entitled to PIP benefits for accidental bodily injuries if he was the owner or registrant of a motor vehicle or motorcycle involved in the accident with respect to which the security required by section 3101 or 3103 was not in effect.

Comments

Owners of uninsured motor vehicles who are injured in an accident are entitled to PIP benefits if the uninsured motor vehicle is not involved in the accident. *Ardt v. Titan Ins. Co.*, 233 Mich. App. 685 (1999).

A person seeking PIP benefits may be deemed the "owner" of an uninsured motor vehicle, depending on the nature of that person's right to use the vehicle; the focus is not on the actual vehicle usage. *Twichel v. MIC General Ins. Corp.*, 469 Mich. 524 (2004).

C. MCL 500.3113(c) – Non-Michigan Resident

(c) A person is not entitled to PIP benefits for accidental bodily injuries if he was not a resident of Michigan, was occupying a motor vehicle or motorcycle not registered in Michigan, and was not insured by an insurer that had filed a certificate in compliance with section 3163.

VIII. MCL 500.3114 and MCL 500.3115 – PRIORITY PROVISIONS

A. MCL 500.3114(1) – General Priority Rule

(1) A no-fault PIP policy applies to accidental bodily injury from a motor vehicle accident to the person named in the policy, his spouse, and a relative of either if domiciled in the same household.

Comments

In general, an injured party must seek PIP benefits from his own insurer first, regardless of whether his vehicle is involved in the accident. *Farmers Ins. Exchange v. AAA of Michigan*, 256 Mich. App. 691 (2003).

Estranged spouses who do not live in the same household as the named insured, but who are not yet legally divorced, are covered by the insured's no-fault policy. However, relatives of the named insured or his or her spouse must live in the same household as the named insured to be covered. *Auto Club Ins. Ass'n v. State Farm Ins. Cos.*, 221 Mich. App. 154 (1997).

College students who depend on their parents for support are covered by their parents' no-fault policy when they return home for the summer.

In determining whether a relative is domiciled with the name insured, courts look at (1) whether the relative maintains possessions at the home; (2) whether the relative has the insured's address on his driver's license; (3) whether the relative receives mail at the insured's address; (4) whether the relative maintains a separate room at the insured's home; and (5) whether the relative depends on the insured for support.

B. MCL 500.3114(2) and (3) – Exceptions

(2) A person suffering accidental bodily injury as an operator or passenger of a motor vehicle that is operated in the business of transporting passengers shall receive no-fault benefits from the insurer of the motor vehicle. This rule does not apply to passengers of a school bus, a bus operated by a common carrier, a bus operating under a government transportation program, a bus for a non-profit organization, an insured taxicab, and a bus operated by a canoe, watercraft, bicycle, or horse livery used only to transport passengers to and from a destination point.

(3) An employee, his spouse, or a relative of either domiciled in the same household who suffers accidental bodily injury as an occupant of a motor vehicle owned or registered by the employer shall receive PIP benefits from the insurer of the vehicle.

Comments

A primary purpose test is applied to determine whether the motor vehicle was "operated in the business of transporting passengers" at the time of the accident. Therefore, a daycare provider's act of transporting children in their care to school incidental to her daycare business was not operating her personal car in the business of transporting passengers. *Farmers Ins. Exchange v. AAA of Michigan*, 256 Mich. App. 691 (2003).

C. MCL 500.3114(4) – Occupants of Motor Vehicles

(4) Except as provided in MCL 500.3114(1), (2), or (3), a person suffering accidental bodily injury from a motor vehicle accident as an occupant of a motor vehicle shall recover no-fault benefits first from the insurer(s) of the owner of the motor vehicle that was occupied, and then from the insurer(s) of the operator of the motor vehicle that was occupied. Where an owner owns more than one vehicle, insured by more than one company, all insurers of the owner are in equal priority for payment of benefits, regardless of which insurer insured the vehicle involved. *Pioneer State Insurance Company v Titan Insurance Company*, 252 Mich App 330 (2002).

D. MCL 500.3114(5) – Motorcyclists

(5) A person suffering accidental bodily injury as an operator or passenger of a motorcycle involved in an accident with a motor vehicle shall recover PIP benefits first from the insurer of the owner or registrant of the motor vehicle, then from the insurer of the operator of the motor vehicle, then from the insurer of the operator of the motorcycle, and then from the insurer of the owner of the motorcycle.

Comments

"Involved in an accident" means more than being in the wrong place at the wrong time. It generally includes a moving vehicle or a stopped vehicle that is struck by a moving vehicle and propelled into a motorcyclist. A motor vehicle that cuts off a motorcyclist may be "involved in the accident", even in the absence of actual physical contact. *Bromley v. Citizens Ins. Co. of America*, 113 Mich. App. 131 (1982). A stopped motor vehicle that a thrown motorcyclist lands upon is not "involved in the accident" if it did not contribute to the accident. *Bachman v. Progressive Casualty Ins. Co.*, 135 Mich. App. 641 (1984).

E. MCL 500.3115(1) & (2) – Pedestrians/Bicyclists/Other Non-Occupants

(1) A person suffering accidental bodily injury while not an occupant of a motor vehicle shall collect PIP benefits in the following order of priority:

1. First from insurers within their own household per MCL 500.3114(1);
2. Then, if there is no coverage per MCL 500.3114(1), from the insurers of owners or registrants of motor vehicles involved in the accident;
3. Finally from insurers of operators of the motor vehicles involved in the accident.

(2) If more than one motor vehicle is involved, and two or more insurers from the same priority level are paying PIP benefits, an insurer is entitled to partial recoupment from the other insurers on the same level of priority, along with a reasonable amount for processing the claim.

IX. MCL 500.3121 and MCL 500.3123 – PROPERTY PROTECTION INSURANCE

A. MCL 500.3121 – Property Protection Benefits

(1) "Under property protection insurance an insurer is liable to pay benefits for accidental damage to tangible property arising out of the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle subject to the provisions of this section and sections 3123, 3125, and 3127. However, accidental damage to tangible property does not include accidental damage to tangible property, *other than the insured motor vehicle*, that occurs within the course of a business of repairing, servicing, or otherwise maintaining motor vehicles." (Emphasis added)

(2) Property protection benefits are due without regard to fault.

(3) "Damage to tangible property consists of physical injury to or destruction of the property and loss of use of the property so injured or destroyed."

(4) "Damage to tangible property is accidental, as to a person claiming property protection insurance benefits, unless it is suffered or caused intentionally by the claimant. Even though a person knows that damage to tangible property is substantially certain to be caused by his or her act or omission, he or she does not cause or suffer such damage intentionally if he or she acts or refrains from acting for the purpose of averting injury to any person, including himself or herself, or for the purpose of averting damage to tangible property."

(5) "Property protection insurance benefits consist of the lesser of reasonable repair costs or replacement costs less depreciation and, if applicable, the value of loss of use. However, property protection insurance benefits paid under 1 policy for damage to all tangible property arising from 1 accident shall not exceed $1,000,000.00."

Comments

Under subsection (1), damage that occurred "within the course of a business" included damage caused to a car mechanic's business due to a faulty wire in an automobile unrelated to the reason the motor vehicle was in for repairs. Thus, under subsection (1) the no-fault insurer was not liable for the damage because it occurred within the course of the mechanic's business. *Universal Underwriters Ins. Group v. Auto Club Ins. Ass'n*, 256 Mich. App. 541 (2003).

Turner v. Auto Club Ins. Ass'n, 448 Mich. 22 (1995), held that "involved in the accident" means that the motor vehicle being operated or used as a motor vehicle must actively, rather than passively, contribute to the accident. A "but for" connection between the motor vehicle's use and the damage resulting from the accident is insufficient to establish the motor vehicle's involvement in the accident. However, neither physical contact nor fault is necessary to show involvement. Only one of the motor vehicles needs to be linked to the damage, and the liability of the other motor vehicles depends on whether or not each had an active link to the accident, regardless of whether that particular motor vehicle's use actually gave rise to the tangible damage. The insurer of a stolen motor vehicle being operated by the thief is still responsible for the damage that occurred to tangible property and for the payment of property protection benefits.

The "arising out of" language from subsection (1) has the same meaning as in other sections of the No-Fault Act; there must be more than a fortuitous, incidental, or "but for" connection between the ownership, maintenance, use, or operation of the motor vehicle as a motor vehicle and the accident causing the damage. In essence, once the accident arises out of the operation, maintenance, ownership, or use of at least a single motor vehicle as a motor vehicle, and tangible property damage occurs, the insurers of all motor vehicles involved in the accident are potentially liable for property protection benefits. Thus, the insurers of the truck that collided with the building, the police car involved in the chase, and the other motor vehicles involved were responsible for sharing in the payment of property protection benefits.

Filing suit against the named insured does not preserve the remedy against the insurer since the action is properly brought only against the insurer. *Matti Awdish, Inc. v. Williams*, 117 Mich. App. 270 (1982); *Home Ins. Co. v. Rosquin*, 90 Mich. App. 682 (1979).

Under subsection (3), "loss of use" is not defined and thus must be construed according to its ordinary and commonly understood meaning. Thus, "loss of use" includes lost profits from business interruption. *Michigan Mut. Ins. Co. v. CNA Ins. Cos.*, 181 Mich. App. 376 (1989).

The Court of Appeals held that the trial court erred in striking the plaintiff's claim for loss of use of the vehicle and the resulting loss of profits, when the insurer failed in good faith to timely settle the insurance claim. The plaintiff sued his insurance carrier due to the handling of his claim for collision damage involving his tractor rig. The plaintiff claimed the loss of use of the vehicle resulted in loss of business revenue normally generated by the vehicle. *Wendt v. Auto Owners Ins. Co.*, 156 Mich. App. 19 (1986).

Based on *Michigan Mut.* and *Wendt*, the phrase "loss of use" of tangible property, i.e. a reasonably parked motor vehicle, may include the cost of renting a replacement vehicle during the loss of use and while the vehicle is being repaired since these damages are not excluded under MCL 500.3123. As yet there are no reported cases directly on point regarding this matter.

B. MCL 500.3123 – Property Protection Benefits Exclusion

(1) Damage to the following types of vehicles is excluded from property protection benefits:

(a) Vehicles and their contents, including trailers, operated or designed for operation upon a public highway by power other than muscular power, unless the vehicle is parked in a manner as not to cause unreasonable risk of the damage which occurred.

C. MCL 500.3145(2) – Property Protection Statute of Limitations

The statute of limitations for a lawsuit seeking property protection insurance benefits is one year from the date of the accident. MCL 500.3145(2).

Comments

The Michigan Supreme Court allowed recovery on a claim for loss of business interruption after a business was damaged by a motor vehicle and applied the doctrine of equitable estoppel to extend the statute of limitations due to the defendant's negotiation tactics that caused the plaintiff to defer its claim in good faith reliance on the defendant's representations. *Cincinnati Ins. Co. v. Citizens Ins. Co.*, 454 Mich. 263 (1997).

X. MCL 500.3151 - MCL 500.3153 – PROCEDURE FOR QUESTIONING CLAIMS FOR PERSONAL AND PROPERTY PROTECTION INSURANCE BENEFITS

A. MCL 500.3151 – Mandatory Mental or Physical Independent Examinations

When the mental or physical condition of a person is material to a claim that has been or may be made for past or future personal protection insurance benefits, the person shall submit to mental or physical examination by physicians. These examinations are commonly referred to as independent medical examination. A personal protection insurer may include reasonable provisions in a personal protection insurance policy providing for such examinations.

B. MCL 500.3152 – IME Reports and Waiver of Privilege

If requested by a person examined (i.e. the claimant), a party causing an examination to be made (i.e. the insurer) shall deliver to him a copy of every written report concerning the examination rendered by an examining physician, at least 1 of which reports shall set out his findings and conclusions in detail. After such request and delivery, the insurer is entitled upon request to receive from the claimant every written report available to him or his representative concerning any examination relevant to the claim, previously or thereafter made, of the same mental or physical condition, and the names and addresses of physicians and medical care facilities rendering diagnoses or treatment in regard to the injury or to a relevant past injury, and shall authorize the insurer to inspect and copy records of physicians, hospitals, clinics or other medical facilities relevant to the claim. By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the claimant waives any privilege he may have, in relation to the claim for benefits, regarding the testimony of every other person who has examined or may thereafter examine him in respect of the same mental or physical condition.

C. MCL 500.3153 – Refusal to Submit to IME or to Make Records Available

A court may make any such orders in regard to the refusal to comply with sections 3151 and 3152 "as are just," except an order to arrest a person for disobeying an order to submit to a physical or mental examination. The orders that may be made in regard to such a refusal include, but are not limited to:

(a) An order that the mental or physical condition of the disobedient person shall be taken to be established for the purposes of the claim in accordance with the contention of the party obtaining the order.

(b) An order refusing to allow the disobedient person to support or oppose designated claims or defenses, or prohibiting him from introducing evidence of mental or physical condition.

(c) An order rendering judgment by default against the disobedient person as to his entire claim or a designated part of it.

(d) An order requiring the disobedient person to reimburse the insurer for reasonable attorneys' fees and expenses incurred in defense against the claim.

(e) An order requiring delivery of a report, in conformity with section 3152, on such terms as are just, and if a physician fails or refuses to make the report a court may exclude his testimony if offered at trial.

Comments

The Court of Appeal held that where an insured "repeatedly" breached his duty to appear for an independent medical examination, an insurer may properly suspend benefits pending completion of any requisite independent medical examination. *Roberts v. Farmers Ins Exch*, 275 Mich. App. 58 (2007).

D. Examination Under Oath

Examinations under oath (EUO) are frequently performed prior to suit to investigate and assess the value of claims. The Michigan Court of Appeals recently held that as a matter of first impression, an EUO provision in a personal protection insurance policy was invalid as contrary to the no-fault statutes with respect to a claim for first-party no-fault benefits. Thus, the court held that the insurer could not deny the claim for first-party no-fault benefits based on the insured's refusal to submit to an EUO. However, the court also held that the EUO provision was enforceable as part of the uninsured motorist policy, and therefore, the trial court appropriately dismissed the claim for uninsured motorist benefits *without prejudice*. As an aside, uninsured motorist coverage is an optional coverage in Michigan controlled by the policy language and not mandated no-fault coverage controlled by statute. *Cruz v. State Farm Mut. Auto. Ins. Co.*, 241 Mich. App. 159 (2000).

XI. MCL 500.3135(3)(d), (4), (5), AND (6) – MINI-TORT

A. Introduction

Mini-tort economic damages should not be confused with property protection insurance benefits pursuant to MCL 500.3121 through MCL 500.3127. MCL 500.3123 specifically excludes damages to vehicles and their contents "unless the vehicle is parked in a manner as not to cause unreasonable risk of the damage which occurred." MCL 500.3123 specifically refers to "vehicles," which is broader than the term "motor vehicle."

Mini-tort economic damages are recoverable only for damage to motor vehicles as defined in the no-fault statute and to the extent that the damages are not covered by insurance up to $1,000. Damages shall be on the basis of comparative fault but shall not be assessed in favor of a party more than 50% at fault.

B. Applicability of Mini-Tort

(3)(d) Notwithstanding any other provision of law, tort liability arising from the ownership, maintenance, or use within this state of a motor vehicle with respect to which the security required by section 3101 was in effect is abolished except as to . . . [d]amages for economic loss by a nonresident in excess of the personal protection insurance benefits provided under section 3163(4). Damages under this subdivision are not recoverable to the extent that benefits covering the same loss are available from other sources, regardless of the nature or number of benefit sources available and regardless of the nature or form of the benefits.

(1) In an action for damages in mini-tort:

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

(b) Coverage for mini-tort is not a required component of residual liability pursuant to MCL 500.3131.

(5) Actions in mini-tort "shall be commenced, whenever legally possible, in the small claims division of the district court or the municipal court. If the defendant or plaintiff removes the action to a higher court and does not prevail, the judge may assess costs." Notably, parties proceeding in the small claims division *cannot* be represented by attorneys, and thus removal from small claims to the general civil docket of the district court is routinely granted once a party retains counsel.

(6) A decision of a court made as to a mini-tort has no res judicata, or binding, effect on any other proceeding or litigation.

Comments

In a situation involving two motor vehicles, neither of which are reasonably parked at the time of the accident, recovery under mini-tort is limited on the basis of comparative fault and, to the extent that the damages are not covered by insurance, up to $1,000. An issue may be whether the motor vehicle involved has broad, standard, or limited form collision coverage. For example, the motor vehicle insured with broad form collision coverage that is 50% or less than 50% at fault *arguably* has no uninsured loss since by the terms of the insurance contract the

deductible is in essence waived and/or covered by the policy. Standard form collision usually means that there will be a deductible. The limited form collision may or may not have a deductible, but the insured must be 50% or less or less than 50% at fault *generally* before the deductible is waived and/or covered by the insurance policy. There are no known published cases in Michigan addressing this issue.

Mini-tort does not apply to a reasonably parked motor vehicle because under MCL 500.3123(1)(a), the reasonably parked motor vehicle is not considered a vehicle. However, a claimant of a reasonably parked motor vehicle is entitled to get all damages to tangible property, including loss of use of the property injured or destroyed, as a component of no-fault property protection damages (MCL 500.3121) rather than under mini-tort (MCL 500.3135(3)(d)). The priority of recovery for a reasonably parked vehicle that is considered a tangible piece of property, such as a mailbox or house, would be in the priority set forth in MCL 500.3125. Under MCL 500.3123(1)(a), "a properly parked motor vehicle was thus treated under the act as non-vehicular property for the purposes of payment of property protection insurance benefits." *Miller v. Auto Owners Ins. Co.*, 411 Mich. 633 (1981).

Since a motorcycle is not a motor vehicle, there is no recovery for damage to a motorcycle under the mini-tort provision as a result of a collision with a motor vehicle. *Nerat v. Swacker*, 150 Mich. App. 61 (1986). However, a reasonably parked motorcycle, as set forth in MCL 500.3123(1)(a), is not a vehicle and may be entitled to recover property protection benefits pursuant to MCL 500.3121. *Miller v. Auto Owners Ins. Co.*, 411 Mich. 633 (1981).

Since mini-tort is in essence a tort action, the statute of limitations would be three years from the accrual date of the claim, which is usually the date of the accident.

XII. COLLISION DAMAGE

Other than in a mini-tort situation, collision damage is not a part of the no-fault statutory scheme. **MCL 500.3101 *et. seq.***

Collision coverage is *not* mandatory in Michigan. However, pursuant to **MCL 257.520(g)**, any policy which grants the coverage mandated by Michigan's No-Fault Act may also grant any lawful coverage in excess of or in addition to the coverage specified for a motor vehicle liability policy, and any such excess or additional coverage shall not be subject to the provisions of Michigan's Financial Responsibility Act.

Under **MCL 500.3037**, when a new applicant for no-fault insurance completes a written application to the insurer, the insurer must offer both limited collision coverage and broad-form collision coverage. **MCL 500.3037(1)(a)** defines limited coverage as coverage "which shall pay for collision damage to the insured vehicle without a deductible amount when the operator of the vehicle is not substantially at fault in the accident from which the damage arose." **MCL 500.3037(1)(b)** defines broad-form collision as "coverage which shall pay for collision damage to the insured vehicle regardless of fault, with deductibles in such amounts as may be approved by the Commissioner, which deductibles shall be waived if the operator of the vehicle is not substantially at fault in the accident from which the damage arose." Collision damage does not include losses customarily insured under comprehensive coverage. **MCL 500.3037(7)(a).** Further, "substantially at fault" is defined as "a person's action or inaction was more than 50% of the cause of the accident." **MCL 500.3037(7)(b).**

If the applicant chooses to reject collision coverage, the applicant must sign a written rejection either on a separate form or as part of the application, or some combination thereof, as approved by Michigan's Insurance Commissioner. At least annually, or at the time of vehicle addition or deletion on a policy, and on a form approved by the Insurance Commissioner, the insurer must inform the policyholder of the current status of the collision coverage, the collision coverage available under the policy, the rights of the insured in the event of damage to the insured vehicle under each collision option, and procedures for the policyholder to follow if he wishes to change the current collision coverage. **MCL 500.3037(6).**

As described in Section XV, *supra*, mini-tort economic damages are recoverable only for damage to motor vehicles as defined in the no-fault statute *to the extent the damages are not covered by insurance*. Mini-tort damages may only be recovered up to $1,000. Thus, if the insurance company waives the deductible, it arguably cannot sue the responsible party in a subrogation action for mini-tort because mini-tort is only for damages to motor vehicles to the extent that damages are not covered by insurance. In the alternative, an insurance company can argue that the responsible party should not benefit from the insured's payment of his premium and the terms of his insurance contract. There are no known cases addressing this issue in Michigan.

XIII. MCL 500.3163 – CERTIFICATION

(1) "An insurer authorized to transact automobile liability insurance and personal and property protection insurance in this state shall file and maintain a written certification that any accidental bodily injury or property damage occurring in this state arising from the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle by an out-of-state resident who is insured under its automobile liability insurance policies, is subject to the personal and property protection insurance system under this act."

(4) If an insurer of an out-of-state resident is required to provide benefits under subsections (1) to (3) to that out-of-state resident for accidental bodily injury for an accident in which the out-of-state resident was not an occupant of a motor vehicle registered in this state, the insurer is only liable for the amount of ultimate loss sustained up to $500,000.00. Benefits under this subsection are not recoverable to the extent that benefits covering the same loss are available from other sources, regardless of the nature or number of benefit sources available and regardless of the nature or form of the benefits.

Comments

MCL 500.3163, through its language "occurring in this state," clearly holds that the statute only applies to accidents occurring in the state of Michigan. Liability for non-resident no-fault benefits under MCL 500.3163 is analyzed in terms of ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle by a non-resident, "rather than according to the terms of the foreign policy." MCL 500.3163 certification mandates full compliance with the Michigan No-Fault Act without regard to the provisions of the foreign contract of insurance. *Transport Ins. Co. v. Home Ins. Co.*, 134 Mich. App. 645 (1984).

The injury need not be sustained by an out-of-state resident so long as the injury arises from the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle by an out-of-state resident. *Tevis v. Amex Assurance Company*, 283 Mich. App. 76, 84 (2009), *lv den* 485 Mich. 926 (2009). In *Tevis*, it was suggested that ownership, alone, by an out-of-state resident, may trigger the duty of a certified insurer to pay Michigan no-fault benefits, although in that case the operator was also an out-of-state resident.

MCL 500.3163(4) is a provision that places a cap on the amount of benefits which an insurer would be required to pay to a non-Michigan resident who is injured as an occupant of a non-Michigan registered motor vehicle.

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

***** *500.3101 THIS SECTION IS AMENDED EFFECTIVE MARCH 21, 2017: See 500.3101.amended* *****

500.3101 Security for payment of benefits required; period security required to be in effect; deletion of coverages; definitions; policy of insurance or other method of providing security; filing proof of security; "insurer" defined.

Sec. 3101. (1) The owner or registrant of a motor vehicle required to be registered in this state shall maintain security for payment of benefits under personal protection insurance, property protection insurance, and residual liability insurance. Security is only required to be in effect during the period the motor vehicle is driven or moved on a highway. Notwithstanding any other provision in this act, an insurer that has issued an automobile insurance policy on a motor vehicle that is not driven or moved on a highway may allow the insured owner or registrant of the motor vehicle to delete a portion of the coverages under the policy and maintain the comprehensive coverage portion of the policy in effect.

(2) As used in this chapter:

(a) "Automobile insurance" means that term as defined in section 2102.

(b) "Commercial quadricycle" means a vehicle to which all of the following apply:

(*i*) The vehicle has fully operative pedals for propulsion entirely by human power.

(*ii*) The vehicle has at least 4 wheels and is operated in a manner similar to a bicycle.

(*iii*) The vehicle has at least 6 seats for passengers.

(*iv*) The vehicle is designed to be occupied by a driver and powered either by passengers providing pedal power to the drive train of the vehicle or by a motor capable of propelling the vehicle in the absence of human power.

(*v*) The vehicle is used for commercial purposes.

(*vi*) The vehicle is operated by the owner of the vehicle or an employee of the owner of the vehicle.

(c) "Golf cart" means a vehicle designed for transportation while playing the game of golf.

(d) "Highway" means highway or street as that term is defined in section 20 of the Michigan vehicle code, 1949 PA 300, MCL 257.20.

(e) "Moped" means that term as defined in section 32b of the Michigan vehicle code, 1949 PA 300, MCL 257.32b.

(f) "Motorcycle" means a vehicle that has a saddle or seat for the use of the rider, is designed to travel on not more than 3 wheels in contact with the ground, and is equipped with a motor that exceeds 50 cubic centimeters piston displacement. For purposes of this subdivision, the wheels on any attachment to the vehicle are not considered as wheels in contact with the ground. Motorcycle does not include a moped or an ORV.

(g) "Motorcycle accident" means a loss that involves the ownership, operation, maintenance, or use of a motorcycle as a motorcycle, but does not involve the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle.

(h) "Motor vehicle" means a vehicle, including a trailer, that is operated or designed for operation on a public highway by power other than muscular power and has more than 2 wheels. Motor vehicle does not include any of the following:

(*i*) A motorcycle.

(*ii*) A moped.

(*iii*) A farm tractor or other implement of husbandry that is not subject to the registration requirements of the Michigan vehicle code under section 216 of the Michigan vehicle code, 1949 PA 300, MCL 257.216.

(*iv*) An ORV.

(*v*) A golf cart.

(*vi*) A power-driven mobility device.

(*vii*) A commercial quadricycle.

(i) "Motor vehicle accident" means a loss that involves the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle regardless of whether the accident also involves the ownership, operation, maintenance, or use of a motorcycle as a motorcycle.

(j) "ORV" means a motor-driven recreation vehicle designed for off-road use and capable of cross-country travel without benefit of road or trail, on or immediately over land, snow, ice, marsh, swampland, or other natural terrain. ORV includes, but is not limited to, a multitrack or multiwheel drive vehicle, a motorcycle or related 2-wheel, 3-wheel, or 4-wheel vehicle, an amphibious machine, a ground effect air cushion vehicle, an ATV as defined in section 81101 of the natural resources and environmental protection act, 1994 PA 451,

MCL 324.81101, or other means of transportation deriving motive power from a source other than muscle or wind. ORV does not include a vehicle described in this subdivision that is registered for use upon a public highway and has the security described in section 3101 or 3103 in effect.

(k) "Owner" means any of the following:

(*i*) A person renting a motor vehicle or having the use of a motor vehicle, under a lease or otherwise, for a period that is greater than 30 days.

(*ii*) A person renting a motorcycle or having the use of a motorcycle under a lease for a period that is greater than 30 days, or otherwise for a period that is greater than 30 consecutive days. A person who borrows a motorcycle for a period that is less than 30 consecutive days with the consent of the owner is not an owner under this subparagraph.

(*iii*) A person that holds the legal title to a motor vehicle or motorcycle, other than a person engaged in the business of leasing motor vehicles or motorcycles that is the lessor of a motor vehicle or motorcycle under a lease that provides for the use of the motor vehicle or motorcycle by the lessee for a period that is greater than 30 days.

(*iv*) A person that has the immediate right of possession of a motor vehicle or motorcycle under an installment sale contract.

(*l*) "Power-driven mobility device" means a wheelchair or other mobility device powered by a battery, fuel, or other engine and designed to be used by an individual with a mobility disability for the purpose of locomotion.

(m) "Registrant" does not include a person engaged in the business of leasing motor vehicles or motorcycles that is the lessor of a motor vehicle or motorcycle under a lease that provides for the use of the motor vehicle or motorcycle by the lessee for a period that is longer than 30 days.

(3) Security required by subsection (1) may be provided under a policy issued by an authorized insurer that affords insurance for the payment of benefits described in subsection (1). A policy of insurance represented or sold as providing security is considered to provide insurance for the payment of the benefits.

(4) Security required by subsection (1) may be provided by any other method approved by the secretary of state as affording security equivalent to that afforded by a policy of insurance, if proof of the security is filed and continuously maintained with the secretary of state throughout the period the motor vehicle is driven or moved on a highway. The person filing the security has all the obligations and rights of an insurer under this chapter. When the context permits, "insurer" as used in this chapter, includes a person that files the security as provided in this section.

History: Add. 1972, Act 294, Eff. Mar. 30, 1973;—Am. 1975, Act 329, Eff. Mar. 31, 1976;—Am. 1977, Act 54, Imd. Eff. July 6, 1977;—Am. 1980, Act 445, Imd. Eff. Jan. 15, 1981;—Am. 1984, Act 84, Imd. Eff. Apr. 19, 1984;—Am. 1987, Act 168, Imd. Eff. Nov. 9, 1987;—Am. 1988, Act 126, Imd. Eff. May 23, 1988;—Am. 2008, Act 241, Imd. Eff. July 17, 2008;—Am. 2014, Act 492, Imd. Eff. Jan. 13, 2015.

Constitutionality: Subsection (1) of this section is unconstitutional but subsection (2) does not violate the due process and equal protection clauses. Shavers v Attorney General, 402 Mich 554; 267 NW2d 72 (1978).

Compiler's note: Act 143 of 1993, which amended this section, was submitted to the people by referendum petition (as Proposal C) and rejected by a majority of the votes cast at the November 8, 1994, general election.

Enacting section 1 of Act 492 of 2014 provides:

"Enacting section 1. Section 3101(2)(h)(vi) of the insurance code of 1956, 1956 PA 218, MCL 500.3101, as added by this amendatory act, shall be applied retroactively."

Popular name: Act 218

Popular name: Essential Insurance

Popular name: No-Fault Insurance

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

***** *500.3101 THIS SECTION IS AMENDED EFFECTIVE MARCH 21, 2017: See 500.3101.amended* *****

500.3101 Security for payment of benefits required; period security required to be in effect; deletion of coverages; definitions; policy of insurance or other method of providing security; filing proof of security; "insurer" defined.

Sec. 3101. (1) The owner or registrant of a motor vehicle required to be registered in this state shall maintain security for payment of benefits under personal protection insurance, property protection insurance, and residual liability insurance. Security is only required to be in effect during the period the motor vehicle is driven or moved on a highway. Notwithstanding any other provision in this act, an insurer that has issued an automobile insurance policy on a motor vehicle that is not driven or moved on a highway may allow the insured owner or registrant of the motor vehicle to delete a portion of the coverages under the policy and maintain the comprehensive coverage portion of the policy in effect.

(2) As used in this chapter:

(a) "Automobile insurance" means that term as defined in section 2102.

(b) "Commercial quadricycle" means a vehicle to which all of the following apply:

(*i*) The vehicle has fully operative pedals for propulsion entirely by human power.

(*ii*) The vehicle has at least 4 wheels and is operated in a manner similar to a bicycle.

(*iii*) The vehicle has at least 6 seats for passengers.

(*iv*) The vehicle is designed to be occupied by a driver and powered either by passengers providing pedal power to the drive train of the vehicle or by a motor capable of propelling the vehicle in the absence of human power.

(*v*) The vehicle is used for commercial purposes.

(*vi*) The vehicle is operated by the owner of the vehicle or an employee of the owner of the vehicle.

(c) "Golf cart" means a vehicle designed for transportation while playing the game of golf.

(d) "Highway" means highway or street as that term is defined in section 20 of the Michigan vehicle code, 1949 PA 300, MCL 257.20.

(e) "Moped" means that term as defined in section 32b of the Michigan vehicle code, 1949 PA 300, MCL 257.32b.

(f) "Motorcycle" means a vehicle that has a saddle or seat for the use of the rider, is designed to travel on not more than 3 wheels in contact with the ground, and is equipped with a motor that exceeds 50 cubic centimeters piston displacement. For purposes of this subdivision, the wheels on any attachment to the vehicle are not considered as wheels in contact with the ground. Motorcycle does not include a moped or an ORV.

(g) "Motorcycle accident" means a loss that involves the ownership, operation, maintenance, or use of a motorcycle as a motorcycle, but does not involve the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle.

(h) "Motor vehicle" means a vehicle, including a trailer, that is operated or designed for operation on a public highway by power other than muscular power and has more than 2 wheels. Motor vehicle does not include any of the following:

(*i*) A motorcycle.

(*ii*) A moped.

(*iii*) A farm tractor or other implement of husbandry that is not subject to the registration requirements of the Michigan vehicle code under section 216 of the Michigan vehicle code, 1949 PA 300, MCL 257.216.

(*iv*) An ORV.

(*v*) A golf cart.

(*vi*) A power-driven mobility device.

(*vii*) A commercial quadricycle.

(i) "Motor vehicle accident" means a loss that involves the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle regardless of whether the accident also involves the ownership, operation, maintenance, or use of a motorcycle as a motorcycle.

(j) "ORV" means a motor-driven recreation vehicle designed for off-road use and capable of cross-country travel without benefit of road or trail, on or immediately over land, snow, ice, marsh, swampland, or other natural terrain. ORV includes, but is not limited to, a multitrack or multiwheel drive vehicle, a motorcycle or related 2-wheel, 3-wheel, or 4-wheel vehicle, an amphibious machine, a ground effect air cushion vehicle, an ATV as defined in section 81101 of the natural resources and environmental protection act, 1994 PA 451,

MCL 324.81101, or other means of transportation deriving motive power from a source other than muscle or wind. ORV does not include a vehicle described in this subdivision that is registered for use upon a public highway and has the security described in section 3101 or 3103 in effect.

(k) "Owner" means any of the following:

(*i*) A person renting a motor vehicle or having the use of a motor vehicle, under a lease or otherwise, for a period that is greater than 30 days.

(*ii*) A person renting a motorcycle or having the use of a motorcycle under a lease for a period that is greater than 30 days, or otherwise for a period that is greater than 30 consecutive days. A person who borrows a motorcycle for a period that is less than 30 consecutive days with the consent of the owner is not an owner under this subparagraph.

(*iii*) A person that holds the legal title to a motor vehicle or motorcycle, other than a person engaged in the business of leasing motor vehicles or motorcycles that is the lessor of a motor vehicle or motorcycle under a lease that provides for the use of the motor vehicle or motorcycle by the lessee for a period that is greater than 30 days.

(*iv*) A person that has the immediate right of possession of a motor vehicle or motorcycle under an installment sale contract.

(*l*) "Power-driven mobility device" means a wheelchair or other mobility device powered by a battery, fuel, or other engine and designed to be used by an individual with a mobility disability for the purpose of locomotion.

(m) "Registrant" does not include a person engaged in the business of leasing motor vehicles or motorcycles that is the lessor of a motor vehicle or motorcycle under a lease that provides for the use of the motor vehicle or motorcycle by the lessee for a period that is longer than 30 days.

(3) Security required by subsection (1) may be provided under a policy issued by an authorized insurer that affords insurance for the payment of benefits described in subsection (1). A policy of insurance represented or sold as providing security is considered to provide insurance for the payment of the benefits.

(4) Security required by subsection (1) may be provided by any other method approved by the secretary of state as affording security equivalent to that afforded by a policy of insurance, if proof of the security is filed and continuously maintained with the secretary of state throughout the period the motor vehicle is driven or moved on a highway. The person filing the security has all the obligations and rights of an insurer under this chapter. When the context permits, "insurer" as used in this chapter, includes a person that files the security as provided in this section.

History: Add. 1972, Act 294, Eff. Mar. 30, 1973;—Am. 1975, Act 329, Eff. Mar. 31, 1976;—Am. 1977, Act 54, Imd. Eff. July 6, 1977;—Am. 1980, Act 445, Imd. Eff. Jan. 15, 1981;—Am. 1984, Act 84, Imd. Eff. Apr. 19, 1984;—Am. 1987, Act 168, Imd. Eff. Nov. 9, 1987;—Am. 1988, Act 126, Imd. Eff. May 23, 1988;—Am. 2008, Act 241, Imd. Eff. July 17, 2008;—Am. 2014, Act 492, Imd. Eff. Jan. 13, 2015.

Constitutionality: Subsection (1) of this section is unconstitutional but subsection (2) does not violate the due process and equal protection clauses. Shavers v Attorney General, 402 Mich 554; 267 NW2d 72 (1978).

Compiler's note: Act 143 of 1993, which amended this section, was submitted to the people by referendum petition (as Proposal C) and rejected by a majority of the votes cast at the November 8, 1994, general election.

Enacting section 1 of Act 492 of 2014 provides:

"Enacting section 1. Section 3101(2)(h)(vi) of the insurance code of 1956, 1956 PA 218, MCL 500.3101, as added by this amendatory act, shall be applied retroactively."

Popular name: Act 218

Popular name: Essential Insurance

Popular name: No-Fault Insurance

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

500.3101a Providing certificates of insurance to policyholder; filing copy with secretary of state; requirements; "private passenger nonfleet automobile" defined; vehicle identification number as proof of vehicle insurance; confidentiality of policy information; prohibited acts; misdemeanor; penalty; report.

Sec. 3101a. (1) Except as otherwise provided in this section, an insurer, in conjunction with the issuance of an automobile insurance policy, as defined in section 3303, shall provide 2 certificates of insurance for each insured vehicle. The insurer shall mark 1 of the certificates as the secretary of state's copy, which copy, except as otherwise provided in this section, shall be filed with the secretary of state by the policyholder upon application for a vehicle registration. The secretary of state shall not maintain the certificate of insurance received under this subsection on file.

(2) Beginning December 30, 2011, an insurer, in conjunction with the issuance of an automobile insurance policy, shall provide to the insured 1 certificate of insurance for each insured vehicle, and for private passenger nonfleet automobiles listed on the policy shall supply to the secretary of state, in the format and timeline as required by the secretary of state, which shall not be required more frequently than every 14 days, the automobile insurer's name, the named insured, the named insured's address, the vehicle identification number for each such vehicle listed on the policy, and the policy number. Until December 31, 2018, the secretary of state shall provide policy information received under this subsection to the department of community health as required for the department of community health to comply with 2006 PA 593, MCL 550.281 to 550.289. In determining the format under this subsection, the secretary of state shall consult with insurers. As used in this subsection, "private passenger nonfleet automobile" means that term as defined in section 3303.

(3) The secretary of state shall accept as proof of vehicle insurance a transmission of the insured vehicle's vehicle identification number. Policy information submitted by an insurer and received by the secretary of state under this section is confidential, is not subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall not be disclosed to any person except the department of community health for purposes of 2006 PA 593, MCL 550.281 to 550.289, or pursuant to an order by a court of competent jurisdiction in connection with a claim or fraud investigation or prosecution. The transmission to the secretary of state of a vehicle identification number is proof of insurance to the secretary of state for motor vehicle registration purposes only and is not evidence that a policy of insurance actually exists between an insurer and an individual.

(4) A person who supplies false information to the secretary of state under this section or who issues or uses an altered, fraudulent, or counterfeit certificate of insurance is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than $1,000.00, or both.

(5) The department of community health shall report to the senate and house of representatives appropriations committees and standing committees concerning insurance issues on the number of claims and total dollar amount recovered from automobile insurers pursuant to 2006 PA 593, MCL 550.281 to 550.289. The reports required by this subsection shall be given to the appropriations committees and standing committees concerning insurance issues by December 30 of each year through December 30, 2018 and shall cover the preceding 12-month period.

History: Add. 1980, Act 461, Eff. Apr. 1, 1981;—Am. 1995, Act 288, Imd. Eff. Jan. 9, 1996;—Am. 1996, Act 456, Imd. Eff. Dec. 23, 1996;—Am. 2011, Act 91, Imd. Eff. July 15, 2011;—Am. 2014, Act 419, Imd. Eff. Dec. 30, 2014.

Compiler's note: Act 143 of 1993, which amended this section, was submitted to the people by referendum petition (as Proposal C) and rejected by a majority of the votes cast at the November 8, 1994, general election.

Popular name: Act 218

Popular name: Essential Insurance

Popular name: No-Fault Insurance

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

***** *500.3101.amended THIS AMENDED SECTION IS EFFECTIVE MARCH 21, 2017* *****

500.3101.amended Security for payment of benefits required; period security required to be in effect; deletion of coverages; definitions; policy of insurance or other method of providing security; filing proof of security; "insurer" defined; exclusion.

Sec. 3101. (1) The owner or registrant of a motor vehicle required to be registered in this state shall maintain security for payment of benefits under personal protection insurance, property protection insurance, and residual liability insurance. Security is only required to be in effect during the period the motor vehicle is driven or moved on a highway. Notwithstanding any other provision in this act, an insurer that has issued an automobile insurance policy on a motor vehicle that is not driven or moved on a highway may allow the insured owner or registrant of the motor vehicle to delete a portion of the coverages under the policy and maintain the comprehensive coverage portion of the policy in effect.

(2) As used in this chapter:

(a) "Automobile insurance" means that term as defined in section 2102.

(b) "Commercial quadricycle" means a vehicle to which all of the following apply:

(*i*) The vehicle has fully operative pedals for propulsion entirely by human power.

(*ii*) The vehicle has at least 4 wheels and is operated in a manner similar to a bicycle.

(*iii*) The vehicle has at least 6 seats for passengers.

(*iv*) The vehicle is designed to be occupied by a driver and powered either by passengers providing pedal power to the drive train of the vehicle or by a motor capable of propelling the vehicle in the absence of human power.

(*v*) The vehicle is used for commercial purposes.

(*vi*) The vehicle is operated by the owner of the vehicle or an employee of the owner of the vehicle.

(c) "Golf cart" means a vehicle designed for transportation while playing the game of golf.

(d) "Highway" means highway or street as that term is defined in section 20 of the Michigan vehicle code, 1949 PA 300, MCL 257.20.

(e) "Moped" means that term as defined in section 32b of the Michigan vehicle code, 1949 PA 300, MCL 257.32b.

(f) "Motorcycle" means a vehicle that has a saddle or seat for the use of the rider, is designed to travel on not more than 3 wheels in contact with the ground, and is equipped with a motor that exceeds 50 cubic centimeters piston displacement. For purposes of this subdivision, the wheels on any attachment to the vehicle are not considered as wheels in contact with the ground. Motorcycle does not include a moped or an ORV.

(g) "Motorcycle accident" means a loss that involves the ownership, operation, maintenance, or use of a motorcycle as a motorcycle, but does not involve the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle.

(h) "Motor vehicle" means a vehicle, including a trailer, that is operated or designed for operation on a public highway by power other than muscular power and has more than 2 wheels. Motor vehicle does not include any of the following:

(*i*) A motorcycle.

(*ii*) A moped.

(*iii*) A farm tractor or other implement of husbandry that is not subject to the registration requirements of the Michigan vehicle code under section 216 of the Michigan vehicle code, 1949 PA 300, MCL 257.216.

(*iv*) An ORV.

(*v*) A golf cart.

(*vi*) A power-driven mobility device.

(*vii*) A commercial quadricycle.

(i) "Motor vehicle accident" means a loss that involves the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle regardless of whether the accident also involves the ownership, operation, maintenance, or use of a motorcycle as a motorcycle.

(j) "ORV" means a motor-driven recreation vehicle designed for off-road use and capable of cross-country travel without benefit of road or trail, on or immediately over land, snow, ice, marsh, swampland, or other natural terrain. ORV includes, but is not limited to, a multitrack or multiwheel drive vehicle, a motorcycle or related 2-wheel, 3-wheel, or 4-wheel vehicle, an amphibious machine, a ground effect air cushion vehicle, an ATV as defined in section 81101 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.81101, or other means of transportation deriving motive power from a source other than muscle or

wind. ORV does not include a vehicle described in this subdivision that is registered for use on a public highway and has the security required under subsection (1) or section 3103 in effect.

(k) "Owner" means any of the following:

(*i*) A person renting a motor vehicle or having the use of a motor vehicle, under a lease or otherwise, for a period that is greater than 30 days.

(*ii*) A person renting a motorcycle or having the use of a motorcycle under a lease for a period that is greater than 30 days, or otherwise for a period that is greater than 30 consecutive days. A person who borrows a motorcycle for a period that is less than 30 consecutive days with the consent of the owner is not an owner under this subparagraph.

(*iii*) A person that holds the legal title to a motor vehicle or motorcycle, other than a person engaged in the business of leasing motor vehicles or motorcycles that is the lessor of a motor vehicle or motorcycle under a lease that provides for the use of the motor vehicle or motorcycle by the lessee for a period that is greater than 30 days.

(*iv*) A person that has the immediate right of possession of a motor vehicle or motorcycle under an installment sale contract.

(*l*) "Power-driven mobility device" means a wheelchair or other mobility device powered by a battery, fuel, or other engine and designed to be used by an individual with a mobility disability for the purpose of locomotion.

(m) "Registrant" does not include a person engaged in the business of leasing motor vehicles or motorcycles that is the lessor of a motor vehicle or motorcycle under a lease that provides for the use of the motor vehicle or motorcycle by the lessee for a period that is longer than 30 days.

(3) Security required by subsection (1) may be provided under a policy issued by an authorized insurer that affords insurance for the payment of benefits described in subsection (1). A policy of insurance represented or sold as providing security is considered to provide insurance for the payment of the benefits.

(4) Security required by subsection (1) may be provided by any other method approved by the secretary of state as affording security equivalent to that afforded by a policy of insurance, if proof of the security is filed and continuously maintained with the secretary of state throughout the period the motor vehicle is driven or moved on a highway. The person filing the security has all the obligations and rights of an insurer under this chapter. When the context permits, "insurer" as used in this chapter, includes a person that files the security as provided in this section.

(5) An insurer that issues a policy that provides the security required under subsection (1) may exclude coverage under the policy as provided in section 3017.

History: Add. 1972, Act 294, Eff. Mar. 30, 1973;—Am. 1975, Act 329, Eff. Mar. 31, 1976;—Am. 1977, Act 54, Imd. Eff. July 6, 1977;—Am. 1980, Act 445, Imd. Eff. Jan. 15, 1981;—Am. 1984, Act 84, Imd. Eff. Apr. 19, 1984;—Am. 1987, Act 168, Imd. Eff. Nov. 9, 1987;—Am. 1988, Act 126, Imd. Eff. May 23, 1988;—Am. 2008, Act 241, Imd. Eff. July 17, 2008;—Am. 2014, Act 492, Imd. Eff. Jan. 13, 2015;—Am. 2016, Act 346, Eff. Mar. 21, 2017.

Constitutionality: Subsection (1) of this section is unconstitutional but subsection (2) does not violate the due process and equal protection clauses. Shavers v Attorney General, 402 Mich 554; 267 NW2d 72 (1978).

Compiler's note: Act 143 of 1993, which amended this section, was submitted to the people by referendum petition (as Proposal C) and rejected by a majority of the votes cast at the November 8, 1994, general election.

Enacting section 1 of Act 492 of 2014 provides:

"Enacting section 1. Section 3101(2)(h)(vi) of the insurance code of 1956, 1956 PA 218, MCL 500.3101, as added by this amendatory act, shall be applied retroactively."

Popular name: Act 218

Popular name: Essential Insurance

Popular name: No-Fault Insurance

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

500.3101b Repealed. 2011, Act 91, Imd. Eff. July 15, 2011.

Compiler's note: The repealed section pertained to providing proof of vehicle insurance through insurance verification board.

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

500.3101c Standard certified statement.

Sec. 3101c. The commissioner shall prescribe a standard certified statement that automobile insurers shall use to show pursuant to section 227a(1)(a) of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.227a of the Michigan Compiled Laws, that a vehicle is insured under a 6-month prepaid, noncancelable policy.

History: Add. 1995, Act 288, Imd. Eff. Jan. 9, 1996.

Popular name: Act 218

Popular name: Essential Insurance

Popular name: No-Fault Insurance

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

500.3101d Qualification as self-insurer; certificate; issuance; cancellation.

Sec. 3101d. (1) A person in whose name more than 25 motor vehicles are registered may qualify as a self-insurer by obtaining a certificate of self-insurance issued by the commissioner under subsection (2).

(2) The commissioner may, in his or her discretion, on the application of a person who wishes to qualify under subsection (1), issue a certificate of self-insurance to the person if the commissioner is satisfied that the person has and will continue to have the ability to pay judgments obtained against the person.

(3) On not less than 5 days' notice and a hearing in accordance with the notice, the commissioner may on reasonable grounds cancel a certificate of self-insurance issued under this section. Failure to pay a judgment within 30 days after the judgment becomes final is a reasonable ground for the cancellation of a certificate of self-insurance.

History: Add. 2012, Act 204, Eff. Jan. 1, 2013.

Popular name: Act 218

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

500.3102 Nonresident owner or registrant of motor vehicle or motorcycle to maintain security for payment of benefits; operation of motor vehicle or motorcycle by owner, registrant, or other person without security; penalty; failure to produce evidence of security; rebuttable presumption.

Sec. 3102. (1) A nonresident owner or registrant of a motor vehicle or motorcycle not registered in this state shall not operate or permit the motor vehicle or motorcycle to be operated in this state for an aggregate of more than 30 days in any calendar year unless he or she continuously maintains security for the payment of benefits pursuant to this chapter.

(2) An owner or registrant of a motor vehicle or motorcycle with respect to which security is required, who operates the motor vehicle or motorcycle or permits it to be operated upon a public highway in this state, without having in full force and effect security complying with this section or section 3101 or 3103 is guilty of a misdemeanor. A person who operates a motor vehicle or motorcycle upon a public highway in this state with the knowledge that the owner or registrant does not have security in full force and effect is guilty of a misdemeanor. A person convicted of a misdemeanor under this section shall be fined not less than $200.00 nor more than $500.00, imprisoned for not more than 1 year, or both.

(3) The failure of a person to produce evidence that a motor vehicle or motorcycle has in full force and effect security complying with this section or section 3101 or 3103 on the date of the issuance of the citation, creates a rebuttable presumption in a prosecution under subsection (2) that the motor vehicle or motorcycle did not have in full force and effect security complying with this section or section 3101 or 3103 on the date of the issuance of the citation.

History: Add. 1972, Act 294, Eff. Mar. 30, 1973;—Am. 1975, Act 329, Eff. Mar. 31, 1976;—Am. 1979, Act 145, Imd. Eff. Nov. 13, 1979;—Am. 1980, Act 446, Imd. Eff. Jan. 15, 1981;—Am. 1987, Act 187, Eff. Mar. 30, 1988;—Am. 1990, Act 79, Imd. Eff. May 24, 1990.

Popular name: Act 218

Popular name: Essential Insurance

Popular name: No-Fault Insurance

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

500.3103 Owner or registrant of motorcycle; security required; offering security for payment of first-party medical benefits; rates, deductibles, and provisions.

Sec. 3103. (1) An owner or registrant of a motorcycle shall provide security against loss resulting from liability imposed by law for property damage, bodily injury, or death suffered by a person arising out of the ownership, maintenance, or use of that motorcycle. The security shall conform with the requirements of section 3009(1).

(2) Each insurer transacting insurance in this state which affords coverage for a motorcycle as described in subsection (1) also shall offer, to an owner or registrant of a motorcycle, security for the payment of first-party medical benefits only, in increments of $5,000.00, payable in the event the owner or registrant is involved in a motorcycle accident. An insurer providing first-party medical benefits may offer, at appropriate premium rates, deductibles, provisions for the coordination of these benefits, and provisions for the subtraction of other benefits provided or required to be provided under the laws of any state or the federal government, subject to the prior approval of the commissioner. These deductibles and provisions shall apply only to benefits payable to the person named in the policy, the spouse of the insured, and any relative of either domiciled in the same household.

History: Add. 1975, Act 329, Eff. Mar. 31, 1976;—Am. 1977, Act 54, Imd. Eff. July 6, 1977;—Am. 1980, Act 445, Eff. Jan. 15, 1981;—Am. 1986, Act 173, Imd. Eff. July 7, 1986.

Constitutionality: The legislative scheme which allows motorcyclists to receive no-fault benefits for personal injuries without requiring them to maintain no-fault security does not deny automobile drivers equal protection or due process of law. Underhill v Safeco Insurance Company, 407 Mich 175; 284 NW2d 463 (1979).

Popular name: Act 218

Popular name: Essential Insurance

Popular name: No-Fault Insurance

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

500.3104 Catastrophic claims association.

Sec. 3104. (1) An unincorporated, nonprofit association to be known as the catastrophic claims association, hereinafter referred to as the association, is created. Each insurer engaged in writing insurance coverages that provide the security required by section 3101(1) within this state, as a condition of its authority to transact insurance in this state, shall be a member of the association and shall be bound by the plan of operation of the association. Each insurer engaged in writing insurance coverages that provide the security required by section 3103(1) within this state, as a condition of its authority to transact insurance in this state, shall be considered a member of the association, but only for purposes of premiums under subsection (7)(d). Except as expressly provided in this section, the association is not subject to any laws of this state with respect to insurers, but in all other respects the association is subject to the laws of this state to the extent that the association would be if it were an insurer organized and subsisting under chapter 50.

(2) The association shall provide and each member shall accept indemnification for 100% of the amount of ultimate loss sustained under personal protection insurance coverages in excess of the following amounts in each loss occurrence:

(a) For a motor vehicle accident policy issued or renewed before July 1, 2002, $250,000.00.

(b) For a motor vehicle accident policy issued or renewed during the period July 1, 2002 to June 30, 2003, $300,000.00.

(c) For a motor vehicle accident policy issued or renewed during the period July 1, 2003 to June 30, 2004, $325,000.00.

(d) For a motor vehicle accident policy issued or renewed during the period July 1, 2004 to June 30, 2005, $350,000.00.

(e) For a motor vehicle accident policy issued or renewed during the period July 1, 2005 to June 30, 2006, $375,000.00.

(f) For a motor vehicle accident policy issued or renewed during the period July 1, 2006 to June 30, 2007, $400,000.00.

(g) For a motor vehicle accident policy issued or renewed during the period July 1, 2007 to June 30, 2008, $420,000.00.

(h) For a motor vehicle accident policy issued or renewed during the period July 1, 2008 to June 30, 2009, $440,000.00.

(i) For a motor vehicle accident policy issued or renewed during the period July 1, 2009 to June 30, 2010, $460,000.00.

(j) For a motor vehicle accident policy issued or renewed during the period July 1, 2010 to June 30, 2011, $480,000.00.

(k) For a motor vehicle accident policy issued or renewed during the period July 1, 2011 to June 30, 2013, $500,000.00. Beginning July 1, 2013, this $500,000.00 amount shall be increased biennially on July 1 of each odd-numbered year, for policies issued or renewed before July 1 of the following odd-numbered year, by the lesser of 6% or the consumer price index, and rounded to the nearest $5,000.00. This biennial adjustment shall be calculated by the association by January 1 of the year of its July 1 effective date.

(3) An insurer may withdraw from the association only upon ceasing to write insurance that provides the security required by section 3101(1) in this state.

(4) An insurer whose membership in the association has been terminated by withdrawal shall continue to be bound by the plan of operation, and upon withdrawal, all unpaid premiums that have been charged to the withdrawing member are payable as of the effective date of the withdrawal.

(5) An unsatisfied net liability to the association of an insolvent member shall be assumed by and apportioned among the remaining members of the association as provided in the plan of operation. The association has all rights allowed by law on behalf of the remaining members against the estate or funds of the insolvent member for sums due the association.

(6) If a member has been merged or consolidated into another insurer or another insurer has reinsured a member's entire business that provides the security required by section 3101(1) in this state, the member and successors in interest of the member remain liable for the member's obligations.

(7) The association shall do all of the following on behalf of the members of the association:

(a) Assume 100% of all liability as provided in subsection (2).

(b) Establish procedures by which members shall promptly report to the association each claim that, on the basis of the injuries or damages sustained, may reasonably be anticipated to involve the association if the member is ultimately held legally liable for the injuries or damages. Solely for the purpose of reporting

claims, the member shall in all instances consider itself legally liable for the injuries or damages. The member shall also advise the association of subsequent developments likely to materially affect the interest of the association in the claim.

(c) Maintain relevant loss and expense data relative to all liabilities of the association and require each member to furnish statistics, in connection with liabilities of the association, at the times and in the form and detail as may be required by the plan of operation.

(d) In a manner provided for in the plan of operation, calculate and charge to members of the association a total premium sufficient to cover the expected losses and expenses of the association that the association will likely incur during the period for which the premium is applicable. The premium shall include an amount to cover incurred but not reported losses for the period and may be adjusted for any excess or deficient premiums from previous periods. Excesses or deficiencies from previous periods may be fully adjusted in a single period or may be adjusted over several periods in a manner provided for in the plan of operation. Each member shall be charged an amount equal to that member's total written car years of insurance providing the security required by section 3101(1) or 3103(1), or both, written in this state during the period to which the premium applies, multiplied by the average premium per car. The average premium per car shall be the total premium calculated divided by the total written car years of insurance providing the security required by section 3101(1) or 3103(1) written in this state of all members during the period to which the premium applies. A member shall be charged a premium for a historic vehicle that is insured with the member of 20% of the premium charged for a car insured with the member. As used in this subdivision:

(*i*) "Car" includes a motorcycle but does not include a historic vehicle.

(*ii*) "Historic vehicle" means a vehicle that is a registered historic vehicle under section 803a or 803p of the Michigan vehicle code, 1949 PA 300, MCL 257.803a and 257.803p.

(e) Require and accept the payment of premiums from members of the association as provided for in the plan of operation. The association shall do either of the following:

(*i*) Require payment of the premium in full within 45 days after the premium charge.

(*ii*) Require payment of the premiums to be made periodically to cover the actual cash obligations of the association.

(f) Receive and distribute all sums required by the operation of the association.

(g) Establish procedures for reviewing claims procedures and practices of members of the association. If the claims procedures or practices of a member are considered inadequate to properly service the liabilities of the association, the association may undertake or may contract with another person, including another member, to adjust or assist in the adjustment of claims for the member on claims that create a potential liability to the association and may charge the cost of the adjustment to the member.

(8) In addition to other powers granted to it by this section, the association may do all of the following:

(a) Sue and be sued in the name of the association. A judgment against the association shall not create any direct liability against the individual members of the association. The association may provide for the indemnification of its members, members of the board of directors of the association, and officers, employees, and other persons lawfully acting on behalf of the association.

(b) Reinsure all or any portion of its potential liability with reinsurers licensed to transact insurance in this state or approved by the commissioner.

(c) Provide for appropriate housing, equipment, and personnel as may be necessary to assure the efficient operation of the association.

(d) Pursuant to the plan of operation, adopt reasonable rules for the administration of the association, enforce those rules, and delegate authority, as the board considers necessary to assure the proper administration and operation of the association consistent with the plan of operation.

(e) Contract for goods and services, including independent claims management, actuarial, investment, and legal services, from others within or without this state to assure the efficient operation of the association.

(f) Hear and determine complaints of a company or other interested party concerning the operation of the association.

(g) Perform other acts not specifically enumerated in this section that are necessary or proper to accomplish the purposes of the association and that are not inconsistent with this section or the plan of operation.

(9) A board of directors is created, hereinafter referred to as the board, which shall be responsible for the operation of the association consistent with the plan of operation and this section.

(10) The plan of operation shall provide for all of the following:

(a) The establishment of necessary facilities.

(b) The management and operation of the association.

(c) Procedures to be utilized in charging premiums, including adjustments from excess or deficient

premiums from prior periods.

(d) Procedures governing the actual payment of premiums to the association.

(e) Reimbursement of each member of the board by the association for actual and necessary expenses incurred on association business.

(f) The investment policy of the association.

(g) Any other matters required by or necessary to effectively implement this section.

(11) Each board shall include members that would contribute a total of not less than 40% of the total premium calculated pursuant to subsection (7)(d). Each director shall be entitled to 1 vote. The initial term of office of a director shall be 2 years.

(12) As part of the plan of operation, the board shall adopt rules providing for the composition and term of successor boards to the initial board, consistent with the membership composition requirements in subsections (11) and (13). Terms of the directors shall be staggered so that the terms of all the directors do not expire at the same time and so that a director does not serve a term of more than 4 years.

(13) The board shall consist of 5 directors, and the commissioner shall be an ex officio member of the board without vote.

(14) Each director shall be appointed by the commissioner and shall serve until that member's successor is selected and qualified. The chairperson of the board shall be elected by the board. A vacancy on the board shall be filled by the commissioner consistent with the plan of operation.

(15) After the board is appointed, the board shall meet as often as the chairperson, the commissioner, or the plan of operation shall require, or at the request of any 3 members of the board. The chairperson shall retain the right to vote on all issues. Four members of the board constitute a quorum.

(16) An annual report of the operations of the association in a form and detail as may be determined by the board shall be furnished to each member.

(17) Not more than 60 days after the initial organizational meeting of the board, the board shall submit to the commissioner for approval a proposed plan of operation consistent with the objectives and provisions of this section, which shall provide for the economical, fair, and nondiscriminatory administration of the association and for the prompt and efficient provision of indemnity. If a plan is not submitted within this 60-day period, then the commissioner, after consultation with the board, shall formulate and place into effect a plan consistent with this section.

(18) The plan of operation, unless approved sooner in writing, shall be considered to meet the requirements of this section if it is not disapproved by written order of the commissioner within 30 days after the date of its submission. Before disapproval of all or any part of the proposed plan of operation, the commissioner shall notify the board in what respect the plan of operation fails to meet the requirements and objectives of this section. If the board fails to submit a revised plan of operation that meets the requirements and objectives of this section within the 30-day period, the commissioner shall enter an order accordingly and shall immediately formulate and place into effect a plan consistent with the requirements and objectives of this section.

(19) The proposed plan of operation or amendments to the plan of operation are subject to majority approval by the board, ratified by a majority of the membership having a vote, with voting rights being apportioned according to the premiums charged in subsection (7)(d) and are subject to approval by the commissioner.

(20) Upon approval by the commissioner and ratification by the members of the plan submitted, or upon the promulgation of a plan by the commissioner, each insurer authorized to write insurance providing the security required by section 3101(1) in this state, as provided in this section, is bound by and shall formally subscribe to and participate in the plan approved as a condition of maintaining its authority to transact insurance in this state.

(21) The association is subject to all the reporting, loss reserve, and investment requirements of the commissioner to the same extent as would a member of the association.

(22) Premiums charged members by the association shall be recognized in the rate-making procedures for insurance rates in the same manner that expenses and premium taxes are recognized.

(23) The commissioner or an authorized representative of the commissioner may visit the association at any time and examine any and all the association's affairs.

(24) The association does not have liability for losses occurring before July 1, 1978.

(25) As used in this section:

(a) “Consumer price index” means the percentage of change in the consumer price index for all urban consumers in the United States city average for all items for the 24 months prior to October 1 of the year prior to the July 1 effective date of the biennial adjustment under subsection (2)(k) as reported by the United States department of labor, bureau of labor statistics, and as certified by the commissioner.

(b) “Motor vehicle accident policy” means a policy providing the coverages required under section 3101(1).

(c) “Ultimate loss” means the actual loss amounts that a member is obligated to pay and that are paid or payable by the member, and do not include claim expenses. An ultimate loss is incurred by the association on the date that the loss occurs.

History: Add. 1978, Act 136, Eff. July 1, 1978;—Am. 1980, Act 445, Imd. Eff. Jan. 15, 1981;—Am. 2001, Act 3, Eff. July 1, 2002;—Am. 2002, Act 662, Eff. July 1, 2003.

Compiler's note: Act 143 of 1993, which amended this section, was submitted to the people by referendum petition (as Proposal C) and rejected by a majority of the votes cast at the November 8, 1994, general election.

For transfer of position of commissioner of office of financial and insurance regulation as member or chairperson of board or commission to director of department of insurance and financial services, see E.R.O. No. 2013-1, compiled at MCL 550.991.

Popular name: Act 218

Popular name: Essential Insurance

Popular name: No-Fault Insurance

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

500.3105 Insurer liable for personal protection benefits without regard to fault; "bodily injury" and "accidental bodily injury" defined.

Sec. 3105. (1) Under personal protection insurance an insurer is liable to pay benefits for accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle, subject to the provisions of this chapter.

(2) Personal protection insurance benefits are due under this chapter without regard to fault.

(3) Bodily injury includes death resulting therefrom and damage to or loss of a person's prosthetic devices in connection with the injury.

(4) Bodily injury is accidental as to a person claiming personal protection insurance benefits unless suffered intentionally by the injured person or caused intentionally by the claimant. Even though a person knows that bodily injury is substantially certain to be caused by his act or omission, he does not cause or suffer injury intentionally if he acts or refrains from acting for the purpose of averting injury to property or to any person including himself.

History: Add. 1972, Act 294, Eff. Mar. 30, 1973.

Popular name: Act 218

Popular name: Essential Insurance

Popular name: No-Fault Insurance

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

500.3106 Accidental bodily injury arising out of ownership, operation, maintenance, or use of parked vehicle as motor vehicle; conditions.

Sec. 3106. (1) Accidental bodily injury does not arise out of the ownership, operation, maintenance, or use of a parked vehicle as a motor vehicle unless any of the following occur:

(a) The vehicle was parked in such a way as to cause unreasonable risk of the bodily injury which occurred.

(b) Except as provided in subsection (2), the injury was a direct result of physical contact with equipment permanently mounted on the vehicle, while the equipment was being operated or used, or property being lifted onto or lowered from the vehicle in the loading or unloading process.

(c) Except as provided in subsection (2), the injury was sustained by a person while occupying, entering into, or alighting from the vehicle.

(2) Accidental bodily injury does not arise out of the ownership, operation, maintenance, or use of a parked vehicle as a motor vehicle if benefits under the worker's disability compensation act of 1969, Act No. 317 of the Public Acts of 1969, as amended, being sections 418.101 to 418.941 of the Michigan Compiled Laws, or under a similar law of another state or under a similar federal law, are available to an employee who sustains the injury in the course of his or her employment while doing either of the following:

(a) Loading, unloading, or doing mechanical work on a vehicle unless the injury arose from the use or operation of another vehicle. As used in this subdivision, "another vehicle" does not include a motor vehicle being loaded on, unloaded from, or secured to, as cargo or freight, a motor vehicle.

(b) Entering into or alighting from the vehicle unless the injury was sustained while entering into or alighting from the vehicle immediately after the vehicle became disabled. This subdivision shall not apply if the injury arose from the use or operation of another vehicle. As used in this subdivision, "another vehicle" does not include a motor vehicle being loaded on, unloaded from or secured to, as cargo or freight, a motor vehicle.

History: Add. 1972, Act 294, Eff. Mar. 30, 1973;—Am. 1981, Act 209, Eff. Jan. 1, 1982;—Am. 1986, Act 318, Eff. June 1, 1987.

Compiler's note: Section 2 of Act 209 of 1981 provides: "This amendatory act shall take effect January 1, 1982 and shall be applicable to all causes of action which occur after the effective date of this amendatory act."

Popular name: Act 218

Popular name: Essential Insurance

Popular name: No-Fault Insurance

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

500.3107 Expenses and work loss for which personal protection benefits payable.

Sec. 3107. (1) Except as provided in subsection (2), personal protection insurance benefits are payable for the following:

(a) Allowable expenses consisting of all reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person's care, recovery, or rehabilitation. Allowable expenses within personal protection insurance coverage shall not include either of the following:

(*i*) Charges for a hospital room in excess of a reasonable and customary charge for semiprivate accommodations except if the injured person requires special or intensive care.

(*ii*) Funeral and burial expenses in excess of the amount set forth in the policy which shall not be less than $1,750.00 or more than $5,000.00.

(b) Work loss consisting of loss of income from work an injured person would have performed during the first 3 years after the date of the accident if he or she had not been injured. Work loss does not include any loss after the date on which the injured person dies. Because the benefits received from personal protection insurance for loss of income are not taxable income, the benefits payable for such loss of income shall be reduced 15% unless the claimant presents to the insurer in support of his or her claim reasonable proof of a lower value of the income tax advantage in his or her case, in which case the lower value shall apply. For the period beginning October 1, 2012 through September 30, 2013, the benefits payable for work loss sustained in a single 30-day period and the income earned by an injured person for work during the same period together shall not exceed $5,189.00, which maximum shall apply pro rata to any lesser period of work loss. Beginning October 1, 2013, the maximum shall be adjusted annually to reflect changes in the cost of living under rules prescribed by the commissioner but any change in the maximum shall apply only to benefits arising out of accidents occurring subsequent to the date of change in the maximum.

(c) Expenses not exceeding $20.00 per day, reasonably incurred in obtaining ordinary and necessary services in lieu of those that, if he or she had not been injured, an injured person would have performed during the first 3 years after the date of the accident, not for income but for the benefit of himself or herself or of his or her dependent.

(2) Both of the following apply to personal protection insurance benefits payable under subsection (1):

(a) A person who is 60 years of age or older and in the event of an accidental bodily injury would not be eligible to receive work loss benefits under subsection (1)(b) may waive coverage for work loss benefits by signing a waiver on a form provided by the insurer. An insurer shall offer a reduced premium rate to a person who waives coverage under this subsection for work loss benefits. Waiver of coverage for work loss benefits applies only to work loss benefits payable to the person or persons who have signed the waiver form.

(b) An insurer shall not be required to provide coverage for the medical use of marihuana or for expenses related to the medical use of marihuana.

History: Add. 1972, Act 294, Eff. Mar. 30, 1973;—Am. 1988, Act 312, Eff. Mar. 30, 1989;—Am. 1991, Act 191, Eff. Jan. 1, 1992;—Am. 2012, Act 542, Imd. Eff. Jan. 2, 2013.

Constitutionality: The legislature did not violate constitutional due process or equal protection in providing for cost-of-living increases for no-fault insurance work loss benefits under subdivision (b) of this section, but not for no-fault insurance survivors' loss benefits under MCL 500.3108. Davey v Detroit Automobile Inter-Insurance Exchange, 414 Mich 1; 322 NW2d 541 (1982).

Compiler's note: Act 143 of 1993, which amended this section, was submitted to the people by referendum petition (as Proposal C) and rejected by a majority of the votes cast at the November 8, 1994, general election.

Popular name: Act 218

Popular name: Essential Insurance

Popular name: No-Fault Insurance

Administrative rules: R 500.811 of the Michigan Administrative Code.

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

500.3107a Basis of work loss for certain injured persons.

Sec. 3107a. Subject to the provisions of section 3107(1)(b), work loss for an injured person who is temporarily unemployed at the time of the accident or during the period of disability shall be based on earned income for the last month employed full time preceding the accident.

History: Add. 1975, Act 311, Imd. Eff. Dec. 22, 1975;—Am. 1991, Act 191, Eff. Jan. 1, 1992.

Popular name: Act 218

Popular name: Essential Insurance

Popular name: No-Fault Insurance

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

500.3107b Reimbursement or coverage for certain expenses not required.

Sec. 3107b. Reimbursement or coverage for expenses within personal protection insurance coverage under section 3107 is not required for any of the following:

(a) A practice of optometry service, unless that service was included in the definition of practice of optometry under section 17401 of the public health code, 1978 PA 368, MCL 333.17401, as of May 20, 1992.

(b) A practice of chiropractic service, unless that service was included in the definition of practice of chiropractic under section 16401 of the public health code, 1978 PA 368, MCL 333.16401, as of January 1, 2009.

(c) A practice of physical therapy service or practice as a physical therapist assistant service, unless that service was provided by a licensed physical therapist or physical therapist assistant under the supervision of a licensed physical therapist pursuant to a prescription from a health care professional who holds a license issued under part 166, 170, 175, or 180 of the public health code, 1978 PA 368, MCL 333.16601 to 333.16648, 333.17001 to 333.17084, 333.17501 to 333.17556, and 333.18001 to 333.18058, or the equivalent license issued by another state.

History: Add. 1994, Act 438, Eff. Mar. 30, 1995;—Am. 2009, Act 222, Imd. Eff. Jan. 5, 2010;—Am. 2014, Act 263, Imd. Eff. July 1, 2014.

Compiler's note: Senate Bill No. 493 was not enacted into law by the 87th Legislature.

Popular name: Act 218

Popular name: Essential Insurance

Popular name: No-Fault Insurance

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

500.3108 Survivor's loss; benefits.

Sec. 3108. (1) Except as provided in subsection (2), personal protection insurance benefits are payable for a survivor's loss which consists of a loss, after the date on which the deceased died, of contributions of tangible things of economic value, not including services, that dependents of the deceased at the time of the deceased's death would have received for support during their dependency from the deceased if the deceased had not suffered the accidental bodily injury causing death and expenses, not exceeding $20.00 per day, reasonably incurred by these dependents during their dependency and after the date on which the deceased died in obtaining ordinary and necessary services in lieu of those that the deceased would have performed for their benefit if the deceased had not suffered the injury causing death. Except as provided in section (2) the benefits payable for a survivors' loss in connection with the death of a person in a single 30-day period shall not exceed $1,000.00 for accidents occurring before October 1, 1978, and shall not exceed $1,475.00 for accidents occurring on or after October 1, 1978, and is not payable beyond the first three years after the date of the accident.

(2) The maximum payable shall be adjusted annually to reflect changes in the cost of living under rules prescribed by the commissioner. A change in the maximum shall apply only to benefits arising out of accidents occurring subsequent to the date of change in the maximum. The maximum shall apply to the aggregate benefits for all survivors payable under this section on account of the death of any one person.

History: Add. 1972, Act 294, Eff. Mar. 30, 1973;—Am. 1978, Act 459, Imd. Eff. Oct. 16, 1978.

Constitutionality: The legislature did not violate constitutional due process or equal protection in providing for cost-of-living increases for no-fault insurance work loss benefits under MCL 500.3107(b), but not for no-fault insurance survivors' loss benefits under this section. Davey v Detroit Automobile Inter-Insurance Exchange, 414 Mich 1; 322 NW2d 541 (1982).

Popular name: Act 218

Popular name: Essential Insurance

Popular name: No-Fault Insurance

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

500.3109 Subtraction of other benefits from personal protection benefits; injured person defined; deductible provision.

Sec. 3109. (1) Benefits provided or required to be provided under the laws of any state or the federal government shall be subtracted from the personal protection insurance benefits otherwise payable for the injury under this chapter.

(2) An injured person is a natural person suffering accidental bodily injury.

(3) An insurer providing personal protection insurance benefits under this chapter may offer, at appropriately reduced premium rates, a deductible of a specified dollar amount. This deductible may be applicable to all or any specified types of personal protection insurance benefits, but shall apply only to benefits payable to the person named in the policy, his or her spouse, and any relative of either domiciled in the same household.

History: Add. 1972, Act 294, Eff. Mar. 30, 1973;—Am. 2012, Act 454, Imd. Eff. Dec. 27, 2012.

Constitutionality: In O'Donnel v State Farm Mutual Automobile Insurance Company, 404 Mich 524; 273 NW2d 829 (1979), the Michigan supreme court held that MCL 500.3109(1) does not violate the due process clause or the equal protection clause of the state or federal constitutions.

In Underhill v Safeco Insurance Company, 407 Mich 175; 284 NW2d 463 (1979), the Michigan supreme court held that subsection (3) of this section authorizing the commissioner to approve deductibles was not an unconstitutional delegation of authority.

The Michigan supreme court in Mathis v Interstate Motor Freight System, 408 Mich 164; 289 NW2d 708 (1980), held that MCL 500.3109(1) as applied to workers' compensation benefits is sustainable under the equal protection clause of the Michigan constitution.

Popular name: Act 218

Popular name: Essential Insurance

Popular name: No-Fault Insurance

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

500.3109a Offering deductibles and exclusions reasonably related to other health and accident coverage; rates; approval; applicability.

Sec. 3109a. An insurer providing personal protection insurance benefits under this chapter may offer, at appropriately reduced premium rates, deductibles and exclusions reasonably related to other health and accident coverage on the insured. Any deductibles and exclusions offered under this section are subject to prior approval by the commissioner and shall apply only to benefits payable to the person named in the policy, the spouse of the insured, and any relative of either domiciled in the same household.

History: Add. 1974, Act 72, Eff. June 4, 1974;—Am. 2012, Act 454, Imd. Eff. Dec. 27, 2012.

Constitutionality: In O'Donnel v State Farm Mutual Automobile Insurance Company, 404 Mich 524; 273 NW2d 829 (1979), the Michigan supreme court declared this statute constitutional.

Compiler's note: Act 143 of 1993, which amended this section, was submitted to the people by referendum petition (as Proposal C) and rejected by a majority of the votes cast at the November 8, 1994, general election.

Popular name: Act 218

Popular name: Essential Insurance

Popular name: No-Fault Insurance

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

500.3110 Dependents of deceased person; termination of dependency; accrual of personal protection benefits.

Sec. 3110. (1) The following persons are conclusively presumed to be dependents of a deceased person:

(a) A wife is dependent on a husband with whom she lives at the time of his death.

(b) A husband is dependent on a wife with whom he lives at the time of her death.

(c) A child while under the age of 18 years, or over that age but physically or mentally incapacitated from earning, is dependent on the parent with whom he lives or from whom he receives support regularly at the time of the death of the parent.

(2) In all other cases, questions of dependency and the extent of dependency shall be determined in accordance with the facts as they exist at the time of death.

(3) The dependency of a surviving spouse terminates upon death or remarriage. The dependency of any other person terminates upon the death of the person and continues only so long as the person is under the age of 18 years, physically or mentally incapacitated from earning, or engaged full time in a formal program of academic or vocational education or training.

(4) Personal protection insurance benefits payable for accidental bodily injury accrue not when the injury occurs but as the allowable expense, work loss or survivors' loss is incurred.

History: Add. 1972, Act 294, Eff. Mar. 30, 1973.

Popular name: Act 218

Popular name: Essential Insurance

Popular name: No-Fault Insurance

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

500.3111 Payment of personal protection benefits for accident occurring out of state.

Sec. 3111. Personal protection insurance benefits are payable for accidental bodily injury suffered in an accident occurring out of this state, if the accident occurs within the United States, its territories and possessions or in Canada, and the person whose injury is the basis of the claim was at the time of the accident a named insured under a personal protection insurance policy, his spouse, a relative of either domiciled in the same household or an occupant of a vehicle involved in the accident whose owner or registrant was insured under a personal protection insurance policy or has provided security approved by the secretary of state under subsection (4) of section 3101.

History: Add. 1972, Act 294, Eff. Mar. 30, 1973.

Popular name: Act 218

Popular name: Essential Insurance

Popular name: No-Fault Insurance

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

500.3112 Persons to whom personal protection benefits payable; discharge of insurer's liability.

Sec. 3112. Personal protection insurance benefits are payable to or for the benefit of an injured person or, in case of his death, to or for the benefit of his dependents. Payment by an insurer in good faith of personal protection insurance benefits, to or for the benefit of a person who it believes is entitled to the benefits, discharges the insurer's liability to the extent of the payments unless the insurer has been notified in writing of the claim of some other person. If there is doubt about the proper person to receive the benefits or the proper apportionment among the persons entitled thereto, the insurer, the claimant or any other interested person may apply to the circuit court for an appropriate order. The court may designate the payees and make an equitable apportionment, taking into account the relationship of the payees to the injured person and other factors as the court considers appropriate. In the absence of a court order directing otherwise the insurer may pay:

(a) To the dependents of the injured person, the personal protection insurance benefits accrued before his death without appointment of an administrator or executor.

(b) To the surviving spouse, the personal protection insurance benefits due any dependent children living with the spouse.

History: Add. 1972, Act 294, Eff. Mar. 30, 1973.

Popular name: Act 218

Popular name: Essential Insurance

Popular name: No-Fault Insurance

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

***** *500.3113 THIS SECTION IS AMENDED EFFECTIVE MARCH 21, 2017: See 500.3113.amended* *****

500.3113 Persons not entitled to personal protection benefits.

Sec. 3113. A person is not entitled to be paid personal protection insurance benefits for accidental bodily injury if at the time of the accident any of the following circumstances existed:

(a) The person was willingly operating or willingly using a motor vehicle or motorcycle that was taken unlawfully, and the person knew or should have known that the motor vehicle or motorcycle was taken unlawfully.

(b) The person was the owner or registrant of a motor vehicle or motorcycle involved in the accident with respect to which the security required by section 3101 or 3103 was not in effect.

(c) The person was not a resident of this state, was an occupant of a motor vehicle or motorcycle not registered in this state, and the motor vehicle or motorcycle was not insured by an insurer that has filed a certification in compliance with section 3163.

(d) The person was operating a motor vehicle or motorcycle as to which he or she was named as an excluded operator as allowed under section 3009(2).

History: Add. 1972, Act 294, Eff. Mar. 30, 1973;—Am. 1986, Act 93, Eff. July 8, 1986;—Am. 2014, Act 489, Imd. Eff. Jan. 13, 2015.

Compiler's note: Section 2 of Act 93 of 1986 provides: "This amendatory act shall not apply to causes of action arising before the effective date of this amendatory act."

Popular name: Act 218

Popular name: Essential Insurance

Popular name: No-Fault Insurance

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

***** *500.3113.amended THIS AMENDED SECTION IS EFFECTIVE MARCH 21, 2017* *****

500.3113.amended Person not entitled to personal protection benefits.

Sec. 3113. A person is not entitled to be paid personal protection insurance benefits for accidental bodily injury if at the time of the accident any of the following circumstances existed:

(a) The person was willingly operating or willingly using a motor vehicle or motorcycle that was taken unlawfully, and the person knew or should have known that the motor vehicle or motorcycle was taken unlawfully.

(b) The person was the owner or registrant of a motor vehicle or motorcycle involved in the accident with respect to which the security required by section 3101 or 3103 was not in effect.

(c) The person was not a resident of this state, was an occupant of a motor vehicle or motorcycle not registered in this state, and the motor vehicle or motorcycle was not insured by an insurer that has filed a certification in compliance with section 3163.

(d) The person was operating a motor vehicle or motorcycle as to which he or she was named as an excluded operator as allowed under section 3009(2).

(e) The person was the owner or operator of a motor vehicle for which coverage was excluded under a policy exclusion authorized under section 3017.

History: Add. 1972, Act 294, Eff. Mar. 30, 1973;—Am. 1986, Act 93, Eff. July 8, 1986;—Am. 2014, Act 489, Imd. Eff. Jan. 13, 2015;—Am. 2016, Act 346, Eff. Mar. 21, 2017.

Compiler's note: Section 2 of Act 93 of 1986 provides: "This amendatory act shall not apply to causes of action arising before the effective date of this amendatory act."

Popular name: Act 218

Popular name: Essential Insurance

Popular name: No-Fault Insurance

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

***** *500.3114 THIS SECTION IS AMENDED EFFECTIVE MARCH 21, 2017: See 500.3114.amended* *****

500.3114 Persons entitled to personal protection insurance benefits or personal injury benefits; recoupment barred; order of priority for claim of motor vehicle occupant or motorcycle operator or passenger; 2 or more insurers in same order of priority; partial recoupment.

Sec. 3114. (1) Except as provided in subsections (2), (3), and (5), a personal protection insurance policy described in section 3101(1) applies to accidental bodily injury to the person named in the policy, the person's spouse, and a relative of either domiciled in the same household, if the injury arises from a motor vehicle accident. A personal injury insurance policy described in section 3103(2) applies to accidental bodily injury to the person named in the policy, the person's spouse, and a relative of either domiciled in the same household, if the injury arises from a motorcycle accident. When personal protection insurance benefits or personal injury benefits described in section 3103(2) are payable to or for the benefit of an injured person under his or her own policy and would also be payable under the policy of his or her spouse, relative, or relative's spouse, the injured person's insurer shall pay all of the benefits and is not entitled to recoupment from the other insurer.

(2) A person suffering accidental bodily injury while an operator or a passenger of a motor vehicle operated in the business of transporting passengers shall receive the personal protection insurance benefits to which the person is entitled from the insurer of the motor vehicle. This subsection does not apply to a passenger in the following, unless that passenger is not entitled to personal protection insurance benefits under any other policy:

(a) A school bus, as defined by the department of education, providing transportation not prohibited by law.

(b) A bus operated by a common carrier of passengers certified by the department of transportation.

(c) A bus operating under a government sponsored transportation program.

(d) A bus operated by or providing service to a nonprofit organization.

(e) A taxicab insured as prescribed in section 3101 or 3102.

(f) A bus operated by a canoe or other watercraft, bicycle, or horse livery used only to transport passengers to or from a destination point.

(3) An employee, his or her spouse, or a relative of either domiciled in the same household, who suffers accidental bodily injury while an occupant of a motor vehicle owned or registered by the employer, shall receive personal protection insurance benefits to which the employee is entitled from the insurer of the furnished vehicle.

(4) Except as provided in subsections (1) to (3), a person suffering accidental bodily injury arising from a motor vehicle accident while an occupant of a motor vehicle shall claim personal protection insurance benefits from insurers in the following order of priority:

(a) The insurer of the owner or registrant of the vehicle occupied.

(b) The insurer of the operator of the vehicle occupied.

(5) A person suffering accidental bodily injury arising from a motor vehicle accident which shows evidence of the involvement of a motor vehicle while an operator or passenger of a motorcycle shall claim personal protection insurance benefits from insurers in the following order of priority:

(a) The insurer of the owner or registrant of the motor vehicle involved in the accident.

(b) The insurer of the operator of the motor vehicle involved in the accident.

(c) The motor vehicle insurer of the operator of the motorcycle involved in the accident.

(d) The motor vehicle insurer of the owner or registrant of the motorcycle involved in the accident.

(6) If 2 or more insurers are in the same order of priority to provide personal protection insurance benefits under subsection (5), an insurer paying benefits due is entitled to partial recoupment from the other insurers in the same order of priority, together with a reasonable amount of partial recoupment of the expense of processing the claim, in order to accomplish equitable distribution of the loss among all of the insurers.

History: Add. 1972, Act 294, Eff. Mar. 30, 1973;—Am. 1975, Act 137, Imd. Eff. July 3, 1975;—Am. 1976, Act 356, Imd. Eff. Dec. 21, 1976;—Am. 1977, Act 53, Imd. Eff. July 5, 1977;—Am. 1980, Act 445, Imd. Eff. Jan. 15, 1981;—Am. 1984, Act 372, Imd. Eff. Dec. 27, 1984;—Am. 2002, Act 38, Imd. Eff. Mar. 7, 2002.

Popular name: Act 218

Popular name: Essential Insurance

Popular name: No-Fault Insurance

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

***** *500.3114.amended THIS AMENDED SECTION IS EFFECTIVE MARCH 21, 2017* *****

500.3114.amended Persons entitled to personal protection insurance benefits or personal injury benefits; order of priority for claim of motor vehicle occupant or motorcycle operator or passenger; 2 or more insurers in same order of priority; partial recoupment; definitions.

Sec. 3114. (1) Except as provided in subsections (2), (3), and (5), a personal protection insurance policy described in section 3101(1) applies to accidental bodily injury to the person named in the policy, the person's spouse, and a relative of either domiciled in the same household, if the injury arises from a motor vehicle accident. A personal injury insurance policy described in section 3103(2) applies to accidental bodily injury to the person named in the policy, the person's spouse, and a relative of either domiciled in the same household, if the injury arises from a motorcycle accident. If personal protection insurance benefits or personal injury benefits described in section 3103(2) are payable to or for the benefit of an injured person under his or her own policy and would also be payable under the policy of his or her spouse, relative, or relative's spouse, the injured person's insurer shall pay all of the benefits and is not entitled to recoupment from the other insurer.

(2) A person suffering accidental bodily injury while an operator or a passenger of a motor vehicle operated in the business of transporting passengers shall receive the personal protection insurance benefits to which the person is entitled from the insurer of the motor vehicle. This subsection does not apply to a passenger in any of the following, unless the passenger is not entitled to personal protection insurance benefits under any other policy:

(a) A school bus, as defined by the department of education, providing transportation not prohibited by law.

(b) A bus operated by a common carrier of passengers certified by the department of transportation.

(c) A bus operating under a government sponsored transportation program.

(d) A bus operated by or providing service to a nonprofit organization.

(e) A taxicab insured as prescribed in section 3101 or 3102.

(f) A bus operated by a canoe or other watercraft, bicycle, or horse livery used only to transport passengers to or from a destination point.

(g) A transportation network company vehicle.

(3) An employee, his or her spouse, or a relative of either domiciled in the same household, who suffers accidental bodily injury while an occupant of a motor vehicle owned or registered by the employer, shall receive personal protection insurance benefits to which the employee is entitled from the insurer of the furnished vehicle.

(4) Except as provided in subsections (1) to (3), a person suffering accidental bodily injury arising from a motor vehicle accident while an occupant of a motor vehicle shall claim personal protection insurance benefits from insurers in the following order of priority:

(a) The insurer of the owner or registrant of the vehicle occupied.

(b) The insurer of the operator of the vehicle occupied.

(5) A person suffering accidental bodily injury arising from a motor vehicle accident that shows evidence of the involvement of a motor vehicle while an operator or passenger of a motorcycle shall claim personal protection insurance benefits from insurers in the following order of priority:

(a) The insurer of the owner or registrant of the motor vehicle involved in the accident.

(b) The insurer of the operator of the motor vehicle involved in the accident.

(c) The motor vehicle insurer of the operator of the motorcycle involved in the accident.

(d) The motor vehicle insurer of the owner or registrant of the motorcycle involved in the accident.

(6) If 2 or more insurers are in the same order of priority to provide personal protection insurance benefits under subsection (5), an insurer paying benefits due is entitled to partial recoupment from the other insurers in the same order of priority, and a reasonable amount of partial recoupment of the expense of processing the claim, in order to accomplish equitable distribution of the loss among all of the insurers.

(7) As used in this section:

(a) "Personal vehicle", "prearranged ride", and "transportation network company digital network" mean those terms as defined in section 2 of the limousine, taxicab, and transportation network company act.

(b) "Transportation network company vehicle" means a personal vehicle while the driver is logged on to the transportation network company digital network or while the driver is engaged in a prearranged ride.

History: Add. 1972, Act 294, Eff. Mar. 30, 1973;—Am. 1975, Act 137, Imd. Eff. July 3, 1975;—Am. 1976, Act 356, Imd. Eff. Dec.

21, 1976;—Am. 1977, Act 53, Imd. Eff. July 5, 1977;—Am. 1980, Act 445, Imd. Eff. Jan. 15, 1981;—Am. 1984, Act 372, Imd. Eff. Dec. 27, 1984;—Am. 2002, Act 38, Imd. Eff. Mar. 7, 2002;—Am. 2016, Act 347, Eff. Mar. 21, 2017.

Popular name: Act 218

Popular name: Essential Insurance

Popular name: No-Fault Insurance

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

500.3115 Priorities as to claims of persons not occupants of vehicle; partial recoupment; limitation on benefits.

Sec. 3115. (1) Except as provided in subsection (1) of section 3114, a person suffering accidental bodily injury while not an occupant of a motor vehicle shall claim personal protection insurance benefits from insurers in the following order of priority:

(a) Insurers of owners or registrants of motor vehicles involved in the accident.

(b) Insurers of operators of motor vehicles involved in the accident.

(2) When 2 or more insurers are in the same order of priority to provide personal protection insurance benefits an insurer paying benefits due is entitled to partial recoupment from the other insurers in the same order of priority, together with a reasonable amount of partial recoupment of the expense of processing the claim, in order to accomplish equitable distribution of the loss among such insurers.

(3) A limit upon the amount of personal protection insurance benefits available because of accidental bodily injury to 1 person arising from 1 motor vehicle accident shall be determined without regard to the number of policies applicable to the accident.

History: Add. 1972, Act 294, Eff. Mar. 30, 1973.

Constitutionality: The legislative scheme which allows motorcyclists to receive no-fault benefits for personal injuries without requiring them to maintain no-fault security does not deny automobile drivers equal protection or due process of law. Underhill v Safeco Insurance Company, 407 Mich 175; 284 NW2d 463 (1979).

Compiler's note: Act 143 of 1993, which amended this section, was submitted to the people by referendum petition (as Proposal C) and rejected by a majority of the votes cast at the November 8, 1994, general election.

Popular name: Act 218

Popular name: Essential Insurance

Popular name: No-Fault Insurance

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

500.3116 Value of claim in tort; subtraction from or reimbursement for benefits.

Sec. 3116. (1) A subtraction from personal protection insurance benefits shall not be made because of the value of a claim in tort based on the same accidental bodily injury.

(2) A subtraction from or reimbursement for personal protection insurance benefits paid or payable under this chapter shall be made only if recovery is realized upon a tort claim arising from an accident occurring outside this state, a tort claim brought within this state against the owner or operator of a motor vehicle with respect to which the security required by section 3101 (3) and (4) was not in effect, or a tort claim brought within this state based on intentionally caused harm to persons or property, and shall be made only to the extent that the recovery realized by the claimant is for damages for which the claimant has received or would otherwise be entitled to receive personal protection insurance benefits. A subtraction shall be made only to the extent of the recovery, exclusive of reasonable attorneys' fees and other reasonable expenses incurred in effecting the recovery. If personal protection insurance benefits have already been received, the claimant shall repay to the insurers out of the recovery a sum equal to the benefits received, but not more than the recovery exclusive of reasonable attorneys' fees and other reasonable expenses incurred in effecting the recovery. The insurer shall have a lien on the recovery to this extent. A recovery by an injured person or his or her estate for loss suffered by the person shall not be subtracted in calculating benefits due a dependent after the death and a recovery by a dependent for loss suffered by the dependent after the death shall not be subtracted in calculating benefits due the injured person.

(3) A personal protection insurer with a right of reimbursement under subsection (1), if suffering loss from inability to collect reimbursement out of a payment received by a claimant upon a tort claim is entitled to indemnity from a person who, with notice of the insurer's interest, made the payment to the claimant without making the claimant and the insurer joint payees as their interests may appear or without obtaining the insurer's consent to a different method of payment.

(4) A subtraction or reimbursement shall not be due the claimant's insurer from that portion of any recovery to the extent that recovery is realized for noneconomic loss as provided in section 3135(1) and (2)(b) or for allowable expenses, work loss, and survivor's loss as defined in sections 3107 to 3110 in excess of the amount recovered by the claimant from his or her insurer.

History: Add. 1972, Act 294, Eff. Mar. 30, 1973;—Am. 1978, Act 461, Imd. Eff. Oct. 16, 1978.

Compiler's note: Act 143 of 1993, which amended this section, was submitted to the people by referendum petition (as Proposal C) and rejected by a majority of the votes cast at the November 8, 1994, general election.

Popular name: Act 218

Popular name: Essential Insurance

Popular name: No-Fault Insurance

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

500.3121 Liability for accidental damage to tangible property.

Sec. 3121. (1) Under property protection insurance an insurer is liable to pay benefits for accidental damage to tangible property arising out of the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle subject to the provisions of this section and sections 3123, 3125, and 3127. However, accidental damage to tangible property does not include accidental damage to tangible property, other than the insured motor vehicle, that occurs within the course of a business of repairing, servicing, or otherwise maintaining motor vehicles.

(2) Property protection insurance benefits are due under the conditions stated in this chapter without regard to fault.

(3) Damage to tangible property consists of physical injury to or destruction of the property and loss of use of the property so injured or destroyed.

(4) Damage to tangible property is accidental, as to a person claiming property protection insurance benefits, unless it is suffered or caused intentionally by the claimant. Even though a person knows that damage to tangible property is substantially certain to be caused by his or her act or omission, he or she does not cause or suffer such damage intentionally if he or she acts or refrains from acting for the purpose of averting injury to any person, including himself or herself, or for the purpose of averting damage to tangible property.

(5) Property protection insurance benefits consist of the lesser of reasonable repair costs or replacement costs less depreciation and, if applicable, the value of loss of use. However, property protection insurance benefits paid under 1 policy for damage to all tangible property arising from 1 accident shall not exceed $1,000,000.00.

History: Add. 1972, Act 294, Eff. Mar. 30, 1973;—Am. 1993, Act 290, Imd. Eff. Dec. 28, 1993.

Popular name: Act 218

Popular name: Essential Insurance

Popular name: No-Fault Insurance

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

500.3123 Exclusions from property protection insurance benefits.

Sec. 3123. (1) Damage to the following kinds of property is excluded from property protection insurance benefits:

(a) Vehicles and their contents, including trailers, operated or designed for operation upon a public highway by power other than muscular power, unless the vehicle is parked in a manner as not to cause unreasonable risk of the damage which occurred.

(b) Property owned by a person named in a property protection insurance policy, the person's spouse or a relative of either domiciled in the same household, if the person named, the person's spouse, or the relative was the owner, registrant, or operator of a vehicle involved in the motor vehicle accident out of which the property damage arose.

(2) Property protection insurance benefits are not payable for property damage arising from motor vehicle accidents occurring outside the state.

(3) Property protection insurance benefits are not payable for property damage to utility transmission lines, wires, or cables arising from the failure of a municipality, utility company, or cable television company to comply with the requirements of section 16 of Act No. 368 of the Public Acts of 1925, being section 247.186 of the Michigan Compiled Laws.

History: Add. 1972, Act 294, Eff. Mar. 30, 1973;—Am. 1978, Act 65, Imd. Eff. Mar. 14, 1978.

Popular name: Act 218

Popular name: Essential Insurance

Popular name: No-Fault Insurance

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

500.3125 Priorities in claiming property protection benefits.

Sec. 3125. A person suffering accidental property damage shall claim property protection insurance benefits from insurers in the following order of priority: insurers of owners or registrants of vehicles involved in the accident; and insurers of operators of vehicles involved in the accident.

History: Add. 1972, Act 294, Eff. Mar. 30, 1973.

Popular name: Act 218

Popular name: Essential Insurance

Popular name: No-Fault Insurance

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

500.3127 Distribution of loss, reimbursement, and indemnification among property protection insurers.

Sec. 3127. The provisions for distribution of loss and for reimbursement and indemnification among personal protection insurers as set forth in subsection (2) of section 3115 and in section 3116 also applies to property protection insurers.

History: Add. 1972, Act 294, Eff. Mar. 30, 1973.

Popular name: Act 218

Popular name: Essential Insurance

Popular name: No-Fault Insurance

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

500.3131 Residual liability insurance; coverage.

Sec. 3131. (1) Residual liability insurance shall cover bodily injury and property damage which occurs within the United States, its territories and possessions, or in Canada. This insurance shall afford coverage equivalent to that required as evidence of automobile liability insurance under the financial responsibility laws of the place in which the injury or damage occurs. In this state this insurance shall afford coverage for automobile liability retained by section 3135.

(2) This section shall not require coverage in this state other than that required by section 3009(1). This section shall apply to all insurance contracts in force as of October 1, 1973, or entered into after that date.

History: Add. 1972, Act 294, Eff. Mar. 30, 1973;—Am. 1978, Act 460, Imd. Eff. Oct. 16, 1978.

Popular name: Act 218

Popular name: Essential Insurance

Popular name: No-Fault Insurance

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

500.3135 Tort liability for noneconomic loss; "serious impairment of body function" defined.

Sec. 3135. (1) A person remains subject to tort liability for noneconomic loss caused by his or her ownership, maintenance, or use of a motor vehicle only if the injured person has suffered death, serious impairment of body function, or permanent serious disfigurement.

(2) For a cause of action for damages pursuant to subsection (1) filed on or after July 26, 1996, all of the following apply:

(a) The issues of whether the 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:

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

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

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

(c) Damages shall not be assessed in favor of a party who was operating his or her own vehicle at the time the injury occurred and did not have in effect for that motor vehicle the security required by section 3101 at the time the injury occurred.

(3) Notwithstanding any other provision of law, tort liability arising from the ownership, maintenance, or use within this state of a motor vehicle with respect to which the security required by section 3101 was in effect is abolished except as to:

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

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

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

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

(e) Damages up to $1,000.00 to a motor vehicle, to the extent that the damages are not covered by insurance. An action for damages under this subdivision shall be conducted as provided in subsection (4).

(4) All of the following apply to an action for damages under subsection (3)(e):

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

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

(c) The action shall be commenced, whenever legally possible, in the small claims division of the district court or the municipal court. If the defendant or plaintiff removes the action to a higher court and does not prevail, the judge may assess costs.

(d) A decision of the court is not res judicata in any proceeding to determine any other liability arising from the same circumstances that gave rise to the action.

(e) Damages shall not be assessed if the damaged motor vehicle was being operated at the time of the damage without the security required by section 3101.

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

History: Add. 1972, Act 294, Eff. Mar. 30, 1973;—Am. 1979, Act 145, Imd. Eff. Nov. 13, 1979;—Am. 1979, Act 147, Imd. Eff. Nov. 13, 1979;—Am. 1995, Act 222, Eff. Mar. 28, 1996;—Am. 2002, Act 697, Eff. Mar. 31, 2003;—Am. 2012, Act 158, Eff. Oct. 1, 2012.

Compiler's note: Act 143 of 1993, which amended this section, was submitted to the people by referendum petition (as Proposal C) and rejected by a majority of the votes cast at the November 8, 1994, general election.

Popular name: Act 218

Popular name: Essential Insurance

Popular name: No-Fault Insurance

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

500.3141 Notice of accident.

Sec. 3141. An insurer may require written notice to be given as soon as practicable after an accident involving a motor vehicle with respect to which the policy affords the security required by this chapter.

History: Add. 1972, Act 294, Eff. Mar. 30, 1973.

Popular name: Act 218

Popular name: Essential Insurance

Popular name: No-Fault Insurance

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

500.3142 Personal protection benefits payable as loss accrues; overdue benefits.

Sec. 3142. (1) Personal protection insurance benefits are payable as loss accrues.

(2) Personal protection insurance benefits are overdue if not paid within 30 days after an insurer receives reasonable proof of the fact and of the amount of loss sustained. If reasonable proof is not supplied as to the entire claim, the amount supported by reasonable proof is overdue if not paid within 30 days after the proof is received by the insurer. Any part of the remainder of the claim that is later supported by reasonable proof is overdue if not paid within 30 days after the proof is received by the insurer. For the purpose of calculating the extent to which benefits are overdue, payment shall be treated as made on the date a draft or other valid instrument was placed in the United States mail in a properly addressed, postpaid envelope, or, if not so posted, on the date of delivery.

(3) An overdue payment bears simple interest at the rate of 12% per annum.

History: Add. 1972, Act 294, Eff. Mar. 30, 1973.

Compiler's note: Act 143 of 1993, which amended this section, was submitted to the people by referendum petition (as Proposal C) and rejected by a majority of the votes cast at the November 8, 1994, general election.

Popular name: Act 218

Popular name: Essential Insurance

Popular name: No-Fault Insurance

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

500.3143 Assignment of right to future benefits void.

Sec. 3143. An agreement for assignment of a right to benefits payable in the future is void.

History: Add. 1972, Act 294, Eff. Mar. 30, 1973.

Popular name: Act 218

Popular name: Essential Insurance

Popular name: No-Fault Insurance

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

500.3145 Limitation of actions for recovery of personal or property protection benefits; notice of injury.

Sec. 3145. (1) An action for recovery of personal protection insurance benefits payable under this chapter for accidental bodily injury may not be commenced later than 1 year after the date of the accident causing the injury unless written notice of injury as provided herein has been given to the insurer within 1 year after the accident or unless the insurer has previously made a payment of personal protection insurance benefits for the injury. If the notice has been given or a payment has been made, the action may be commenced at any time within 1 year after the most recent allowable expense, work loss or survivor's loss has been incurred. However, the claimant may not recover benefits for any portion of the loss incurred more than 1 year before the date on which the action was commenced. The notice of injury required by this subsection may be given to the insurer or any of its authorized agents by a person claiming to be entitled to benefits therefor, or by someone in his behalf. The notice shall give the name and address of the claimant and indicate in ordinary language the name of the person injured and the time, place and nature of his injury.

(2) An action for recovery of property protection insurance benefits shall not be commenced later than 1 year after the accident.

History: Add. 1972, Act 294, Eff. Mar. 30, 1973.

Compiler's note: Act 143 of 1993, which amended this section, was submitted to the people by referendum petition (as Proposal C) and rejected by a majority of the votes cast at the November 8, 1994, general election.

Popular name: Act 218

Popular name: Essential Insurance

Popular name: No-Fault Insurance

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

500.3146 Limitation of action by insurer for recovery or indemnity.

Sec. 3146. An action by an insurer to enforce its rights of recovery or indemnity under section 3116 may not be commenced later than 1 year after payment has been received by a claimant upon a tort claim with respect to which the insurer has a right of reimbursement or recovery under section 3116.

History: Add. 1972, Act 294, Eff. Mar. 30, 1973.

Popular name: Act 218

Popular name: Essential Insurance

Popular name: No-Fault Insurance

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

500.3148 Attorney's fee.

Sec. 3148. (1) An attorney is entitled to a reasonable fee for advising and representing a claimant in an action for personal or property protection insurance benefits which are overdue. The attorney's fee shall be a charge against the insurer in addition to the benefits recovered, if the court finds that the insurer unreasonably refused to pay the claim or unreasonably delayed in making proper payment.

(2) An insurer may be allowed by a court an award of a reasonable sum against a claimant as an attorney's fee for the insurer's attorney in defense against a claim that was in some respect fraudulent or so excessive as to have no reasonable foundation. To the extent that personal or property protection insurance benefits are then due or thereafter come due to the claimant because of loss resulting from the injury on which the claim is based, such a fee may be treated as an offset against such benefits; also, judgment may be entered against the claimant for any amount of a fee awarded against him and not offset in this way or otherwise paid.

History: Add. 1972, Act 294, Eff. Mar. 30, 1973.

Popular name: Act 218

Popular name: Essential Insurance

Popular name: No-Fault Insurance

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

500.3151 Submission to mental or physical examination.

Sec. 3151. When the mental or physical condition of a person is material to a claim that has been or may be made for past or future personal protection insurance benefits, the person shall submit to mental or physical examination by physicians. A personal protection insurer may include reasonable provisions in a personal protection insurance policy for mental and physical examination of persons claiming personal protection insurance benefits.

History: Add. 1972, Act 294, Eff. Mar. 30, 1973.

Popular name: Act 218

Popular name: Essential Insurance

Popular name: No-Fault Insurance

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

500.3152 Report of mental or physical examination.

Sec. 3152. If requested by a person examined, a party causing an examination to be made shall deliver to him a copy of every written report concerning the examination rendered by an examining physician, at least 1 of which reports shall set out his findings and conclusions in detail. After such request and delivery, the party causing the examination to be made is entitled upon request to receive from the person examined every written report available to him or his representative concerning any examination relevant to the claim, previously or thereafter made, of the same mental or physical condition, and the names and addresses of physicians and medical care facilities rendering diagnoses or treatment in regard to the injury or to a relevant past injury, and shall authorize the insurer to inspect and copy records of physicians, hospitals, clinics or other medical facilities relevant to the claim. By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the person examined waives any privilege he may have, in relation to the claim for benefits, regarding the testimony of every other person who has examined or may thereafter examine him in respect of the same mental or physical condition.

History: Add. 1972, Act 294, Eff. Mar. 30, 1973.

Popular name: Act 218

Popular name: Essential Insurance

Popular name: No-Fault Insurance

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

500.3153 Court orders as to noncompliance with MCL 500.3151 and 500.3152.

Sec. 3153. A court may make such orders in regard to the refusal to comply with sections 3151 and 3152 as are just, except that an order shall not be entered directing the arrest of a person for disobeying an order to submit to a physical or mental examination. The orders that may be made in regard to such a refusal include, but are not limited to:

(a) An order that the mental or physical condition of the disobedient person shall be taken to be established for the purposes of the claim in accordance with the contention of the party obtaining the order.

(b) An order refusing to allow the disobedient person to support or oppose designated claims or defenses, or prohibiting him from introducing evidence of mental or physical condition.

(c) An order rendering judgment by default against the disobedient person as to his entire claim or a designated part of it.

(d) An order requiring the disobedient person to reimburse the insurer for reasonable attorneys' fees and expenses incurred in defense against the claim.

(e) An order requiring delivery of a report, in conformity with section 3152, on such terms as are just, and if a physician fails or refuses to make the report a court may exclude his testimony if offered at trial.

History: Add. 1972, Act 294, Eff. Mar. 30, 1973.

Popular name: Act 218

Popular name: Essential Insurance

Popular name: No-Fault Insurance

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

500.3157 Charges for products, services, and accommodations where treatment rendered.

Sec. 3157. A physician, hospital, clinic or other person or institution lawfully rendering treatment to an injured person for an accidental bodily injury covered by personal protection insurance, and a person or institution providing rehabilitative occupational training following the injury, may charge a reasonable amount for the products, services and accommodations rendered. The charge shall not exceed the amount the person or institution customarily charges for like products, services and accommodations in cases not involving insurance.

History: Add. 1972, Act 294, Eff. Mar. 30, 1973.

Compiler's note: Act 143 of 1993, which amended this section, was submitted to the people by referendum petition (as Proposal C) and rejected by a majority of the votes cast at the November 8, 1994, general election.

Popular name: Act 218

Popular name: Essential Insurance

Popular name: No-Fault Insurance

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

500.3158 Statement of earnings; report and records from medical institution.

Sec. 3158. (1) An employer, when a request is made by a personal protection insurer against whom a claim has been made, shall furnish forthwith, in a form approved by the commissioner of insurance, a sworn statement of the earnings since the time of the accidental bodily injury and for a reasonable period before the injury, of the person upon whose injury the claim is based.

(2) A physician, hospital, clinic or other medical institution providing, before or after an accidental bodily injury upon which a claim for personal protection insurance benefits is based, any product, service or accommodation in relation to that or any other injury, or in relation to a condition claimed to be connected with that or any other injury, if requested to do so by the insurer against whom the claim has been made, (a) shall furnish forthwith a written report of the history, condition, treatment and dates and costs of treatment of the injured person and (b) shall produce forthwith and permit inspection and copying of its records regarding the history, condition, treatment and dates and costs of treatment.

History: Add. 1972, Act 294, Eff. Mar. 30, 1973.

Popular name: Act 218

Popular name: Essential Insurance

Popular name: No-Fault Insurance

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

500.3159 Discovery.

Sec. 3159. In a dispute regarding an insurer's right to discovery of facts about an injured person's earnings or about his history, condition, treatment and dates and costs of treatment, a court may enter an order for the discovery. The order may be made only on motion for good cause shown and upon notice to all persons having an interest, and shall specify the time, place, manner, conditions and scope of the discovery. A court, in order to protect against annoyance, embarrassment or oppression, as justice requires, may enter an order refusing discovery or specifying conditions of discovery and may order payments of costs and expenses of the proceeding, including reasonable fees for the appearance of attorneys at the proceedings, as justice requires.

History: Add. 1972, Act 294, Eff. Mar. 30, 1973.

Popular name: Act 218

Popular name: Essential Insurance

Popular name: No-Fault Insurance

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

500.3163 Certification by admitted and nonadmitted insurers as to protection of out-of-state resident; rights and immunities of insurer and insureds; benefits to out-of-state resident; limitation.

Sec. 3163. (1) An insurer authorized to transact automobile liability insurance and personal and property protection insurance in this state shall file and maintain a written certification that any accidental bodily injury or property damage occurring in this state arising from the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle by an out-of-state resident who is insured under its automobile liability insurance policies, is subject to the personal and property protection insurance system under this act.

(2) A nonadmitted insurer may voluntarily file the certification described in subsection (1).

(3) Except as otherwise provided in subsection (4), if a certification filed under subsection (1) or (2) applies to accidental bodily injury or property damage, the insurer and its insureds with respect to that injury or damage have the rights and immunities under this act for personal and property protection insureds, and claimants have the rights and benefits of personal and property protection insurance claimants, including the right to receive benefits from the electing insurer as if it were an insurer of personal and property protection insurance applicable to the accidental bodily injury or property damage.

(4) If an insurer of an out-of-state resident is required to provide benefits under subsections (1) to (3) to that out-of-state resident for accidental bodily injury for an accident in which the out-of-state resident was not an occupant of a motor vehicle registered in this state, the insurer is only liable for the amount of ultimate loss sustained up to $500,000.00. Benefits under this subsection are not recoverable to the extent that benefits covering the same loss are available from other sources, regardless of the nature or number of benefit sources available and regardless of the nature or form of the benefits.

History: Add. 1972, Act 294, Eff. Mar. 30, 1973;—Am. 2002, Act 697, Eff. Mar. 31, 2003.

Popular name: Act 218

Popular name: Essential Insurance

Popular name: No-Fault Insurance

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

500.3171 Assigned claims plan; organization and maintenance; participation; costs; rules; adoption and maintenance by Michigan automobile insurance placement facility; approval of plan; amendments; provisions; report; definitions.

Sec. 3171. (1) Until an assigned claims plan is approved under subsection (3), the secretary of state shall organize and maintain an assigned claims facility and plan. A self-insurer and insurer writing insurance as provided by this chapter in this state shall participate in the assigned claims plan. Costs incurred in the operation of the facility and the plan shall be allocated fairly among insurers and self-insurers. The secretary of state shall promulgate rules to implement the facility and plan in accordance with and subject to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. After an assigned claims plan is approved under subsection (3), the secretary of state shall continue to maintain the assigned claims facility and plan organized under this subsection as required by the plan approved under subsection (3).

(2) The Michigan automobile insurance placement facility shall adopt and maintain an assigned claims plan. A self-insurer or insurer writing insurance as provided by this chapter in this state shall participate in the assigned claims plan. Costs incurred in the administration of the assigned claims plan shall be allocated fairly among insurers and self-insurers. On approval under subsection (3), the Michigan automobile insurance placement facility shall implement the assigned claims plan.

(3) By August 1, 2012, the Michigan automobile insurance placement facility board of governors shall adopt an assigned claims plan by majority vote and shall submit it to the commissioner for his or her approval. The commissioner shall review the plan within 30 days and respond in writing as provided in this subsection. If the commissioner finds that the plan meets the requirements of this chapter, he or she shall approve it. If the commissioner finds that the plan fails to meet the requirements of this chapter, he or she shall state in what respects the plan is deficient and shall afford the Michigan automobile insurance placement facility board of governors 10 days within which to correct the deficiency. If the commissioner and the Michigan automobile insurance placement facility board of governors fail to agree that the plan submitted, with any corrections, meets the requirements of this chapter, either party to the controversy may submit the issue to the circuit court for Ingham county for a determination. If the commissioner fails to render a written decision on the assigned claims plan within 30 days after receipt of the plan, the plan shall be considered approved. The Michigan automobile insurance placement facility shall forward a plan approved under this subsection to the secretary of state. The plan takes effect on approval by the commissioner.

(4) Amendments to the assigned claims plan approved under subsection (3) shall be adopted by the board of governors and approved by the commissioner as provided in subsection (3). Until the date established in the plan under subsection (5)(c), the board of governors shall give the secretary of state advance notice of any proposed amendments to the plan.

(5) The plan adopted under subsection (3) shall include all of the following:

(a) The date on and after which all claims for benefits through the assigned claims plan under section 3172 shall be filed with the Michigan automobile insurance placement facility.

(b) The date by which existing claims that have been assigned under the plan maintained by the secretary of state under subsection (1) will be transferred to the Michigan automobile insurance placement facility to be included in and administered under the adopted plan.

(c) A date by which all functions of the assigned claims plan maintained by the secretary of state, with the exception of driver license and vehicle sanctions, will be transferred to the Michigan automobile insurance placement facility.

(d) Requirements for the transfer of records relating to assigned claims from the secretary of state to the Michigan automobile insurance placement facility and the disposition by the secretary of state of records relating to assigned claims.

(e) Reimbursement of the secretary of state by the Michigan automobile insurance placement facility for all of the following:

(*i*) Expenses of developing the plan under subsection (6).

(*ii*)Expenses of transferring operations from the assigned claims facility to the Michigan automobile insurance placement facility.

(*iii*) Expenses incurred by the secretary of state after the transfer of operations from the assigned claims facility to the Michigan automobile insurance placement facility for operations performed by the secretary of state on behalf of the Michigan automobile insurance placement facility.

(6) The secretary of state and the Michigan automobile insurance placement facility shall cooperate and mutually develop the aspects of the plan to be adopted under subsection (3) that are required under subsection

(5).

(7) The secretary of state shall provide the Michigan automobile insurance placement facility with all information necessary for the operation of the assigned claims fund.

(8) One year after the date established under subsection (5)(c), the commissioner shall report in writing to the senate and house of representatives standing committees on insurance issues on the cost of the transfer of the assigned claims plan to the Michigan automobile insurance placement facility and the effectiveness of operations under the new plan.

(9) As used in this section:

(a) "Michigan automobile insurance placement facility" means the Michigan automobile insurance placement facility created under chapter 33.

(b) "Michigan automobile insurance placement facility board of governors" means the board of governors created under section 3310.

History: Add. 1972, Act 294, Eff. Mar. 30, 1973;—Am. 1972, Act 345, Imd. Eff. Jan. 9, 1973;—Am. 2012, Act 204, Imd. Eff. June 27, 2012.

Popular name: Act 218

Popular name: Essential Insurance

Popular name: No-Fault Insurance

Administrative rules: R 11.101 et seq. of the Michigan Administrative Code.

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

500.3172 Conditions to obtaining personal protection insurance benefits through assigned claims plan; collection of unpaid benefits; reimbursement from defaulting insurers; reduction of benefits; applicability of subsection (2); definitions; effect of dispute between insurers.

Sec. 3172. (1) A person entitled to claim because of accidental bodily injury arising out of the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle in this state may obtain personal protection insurance benefits through the assigned claims plan if no personal protection insurance is applicable to the injury, no personal protection insurance applicable to the injury can be identified, the personal protection insurance applicable to the injury cannot be ascertained because of a dispute between 2 or more automobile insurers concerning their obligation to provide coverage or the equitable distribution of the loss, or the only identifiable personal protection insurance applicable to the injury is, because of financial inability of 1 or more insurers to fulfill their obligations, inadequate to provide benefits up to the maximum prescribed. In that case, unpaid benefits due or coming due may be collected under the assigned claims plan and the insurer to which the claim is assigned is entitled to reimbursement from the defaulting insurers to the extent of their financial responsibility.

(2) Except as otherwise provided in this subsection, personal protection insurance benefits, including benefits arising from accidents occurring before March 29, 1985, payable through the assigned claims plan shall be reduced to the extent that benefits covering the same loss are available from other sources, regardless of the nature or number of benefit sources available and regardless of the nature or form of the benefits, to a person claiming personal protection insurance benefits through the assigned claims plan. This subsection only applies if the personal protection insurance benefits are payable through the assigned claims plan because no personal protection insurance is applicable to the injury, no personal protection insurance applicable to the injury can be identified, or the only identifiable personal protection insurance applicable to the injury is, because of financial inability of 1 or more insurers to fulfill their obligations, inadequate to provide benefits up to the maximum prescribed. As used in this subsection, "sources" and "benefit sources" do not include the program for medical assistance for the medically indigent under the social welfare act, 1939 PA 280, MCL 400.1 to 400.119b, or insurance under the health insurance for the aged act, title XVIII of the social security act, 42 USC 1395 to 1395kkk-1.

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

(a) The insurers who are parties to the dispute shall, or the claimant may, immediately notify the Michigan automobile insurance placement facility of their inability to determine their statutory obligations.

(b) The claim shall be assigned by the Michigan automobile insurance placement facility to an insurer and the insurer shall immediately provide personal protection insurance benefits to the claimant or claimants entitled to benefits.

(c) An action shall be immediately commenced on behalf of the Michigan automobile insurance placement facility by the insurer to whom the claim is assigned in circuit court to declare the rights and duties of any interested party.

(d) The insurer to whom the claim is assigned shall join as parties defendant to the action commenced under subdivision (c) each insurer disputing either the obligation to provide personal protection insurance benefits or the equitable distribution of the loss among the insurers.

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

(f) After hearing the action, the circuit court shall determine the insurer or insurers, if any, obligated to provide the applicable personal protection insurance benefits and the equitable distribution, if any, among the insurers obligated, and shall order reimbursement to the Michigan automobile insurance placement facility from the insurer or insurers to the extent of the responsibility as determined by the court. The reimbursement ordered under this subdivision shall include all benefits and costs paid or incurred by the Michigan automobile insurance placement facility and all benefits and costs paid or incurred by insurers determined not to be obligated to provide applicable personal protection insurance benefits, including reasonable, actually incurred attorney fees and interest at the rate prescribed in section 3175 as of December 31 of the year preceding the determination of the circuit court.

History: Add. 1972, Act 294, Eff. Mar. 30, 1973;—Am. 1972, Act 345, Imd. Eff. Jan. 9, 1973;—Am. 1984, Act 426, Eff. Mar. 29, 1985;—Am. 2012, Act 204, Eff. Sept. 1, 2012.

Compiler's note: Act 143 of 1993, which amended this section, was submitted to the people by referendum petition (as Proposal C) and rejected by a majority of the votes cast at the November 8, 1994, general election.

Enacting section 1 of Act 204 of 2012 provides:

"Enacting section 1. Sections 3172, 3173a, 3174, and 3175 of the insurance code of 1956, 1956 PA 218, MCL 500.3172, 500.3173a, 500.3174, and 500.3175, as amended by this amendatory act, take effect on the date the assigned claims plan is approved by the insurance commissioner under section 3171(3) of the insurance code of 1956, 1956 PA 218, MCL 500.3171."

Popular name: Act 218

Popular name: Essential Insurance

Popular name: No-Fault Insurance

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

500.3173 Certain persons disqualified from receiving benefits under assigned claims plans.

Sec. 3173. A person who because of a limitation or exclusion in sections 3105 to 3116 is disqualified from receiving personal protection insurance benefits under a policy otherwise applying to his accidental bodily injury is also disqualified from receiving benefits under the assigned claims plan.

History: Add. 1972, Act 294, Eff. Mar. 30, 1973.

Popular name: Act 218

Popular name: Essential Insurance

Popular name: No-Fault Insurance

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

500.3173a Eligibility for benefits; initial determination; denial; notice; false statement.

Sec. 3173a. (1) The Michigan automobile insurance placement facility shall make an initial determination of a claimant's eligibility for benefits under the assigned claims plan and shall deny an obviously ineligible claim. The claimant shall be notified promptly in writing of the denial and the reasons for the denial.

(2) A person who presents or causes to be presented an oral or written statement, including computer-generated information, as part of or in support of a claim to the Michigan automobile insurance placement facility for payment or another benefit knowing that the statement contains false information concerning a fact or thing material to the claim commits a fraudulent insurance act under section 4503 that is subject to the penalties imposed under section 4511. A claim that contains or is supported by a fraudulent insurance act as described in this subsection is ineligible for payment or benefits under the assigned claims plan.

History: Add. 1984, Act 426, Eff. Mar. 29, 1985;—Am. 2012, Act 204, Eff. Sept. 1, 2012.

Compiler's note: Enacting section 1 of Act 204 of 2012 provides:

"Enacting section 1. Sections 3172, 3173a, 3174, and 3175 of the insurance code of 1956, 1956 PA 218, MCL 500.3172, 500.3173a, 500.3174, and 500.3175, as amended by this amendatory act, take effect on the date the assigned claims plan is approved by the insurance commissioner under section 3171(3) of the insurance code of 1956, 1956 PA 218, MCL 500.3171."

Popular name: Act 218

Popular name: Essential Insurance

Popular name: No-Fault Insurance

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

500.3174 Notice of claim through assigned claims plan; assignment of claim; notice to claimant; commencement of action by claimant.

Sec. 3174. A person claiming through the assigned claims plan shall notify the Michigan automobile insurance placement facility of his or her claim within the time that would have been allowed for filing an action for personal protection insurance benefits if identifiable coverage applicable to the claim had been in effect. The Michigan automobile insurance placement facility shall promptly assign the claim in accordance with the plan and notify the claimant of the identity and address of the insurer to which the claim is assigned. An action by the claimant shall not be commenced more than 30 days after receipt of notice of the assignment or the last date on which the action could have been commenced against an insurer of identifiable coverage applicable to the claim, whichever is later.

History: Add. 1972, Act 294, Eff. Mar. 30, 1973;—Am. 1972, Act 345, Imd. Eff. Jan. 9, 1973;—Am. 2012, Act 204, Eff. Sept. 1, 2012.

Compiler's note: Enacting section 1 of Act 204 of 2012 provides:

"Enacting section 1. Sections 3172, 3173a, 3174, and 3175 of the insurance code of 1956, 1956 PA 218, MCL 500.3172, 500.3173a, 500.3174, and 500.3175, as amended by this amendatory act, take effect on the date the assigned claims plan is approved by the insurance commissioner under section 3171(3) of the insurance code of 1956, 1956 PA 218, MCL 500.3171."

Popular name: Act 218

Popular name: Essential Insurance

Popular name: No-Fault Insurance

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

500.3175 Rules for assignment of claims; duties of insurer to whom claims assigned; compromises and settlements; procedures; limitation on action to enforce rights; interest on delinquent payments; installment payments; default.

Sec. 3175. (1) The assignment of claims under the assigned claims plan shall be made according to procedures established in the assigned claims plan that assure fair allocation of the burden of assigned claims among insurers doing business in this state on a basis reasonably related to the volume of automobile liability and personal protection insurance they write on motor vehicles or the number of self-insured motor vehicles. An insurer to whom claims have been assigned shall make prompt payment of loss in accordance with this act. An insurer is entitled to reimbursement by the Michigan automobile insurance placement facility for the payments, the established loss adjustment cost, and an amount determined by use of the average annual 90-day United States treasury bill yield rate, as reported by the council of economic advisers as of December 31 of the year for which reimbursement is sought, as follows:

(a) For the calendar year in which claims are paid by the insurer, the amount shall be determined by applying the specified annual yield rate specified in this subsection to 1/2 of the total claims payments and loss adjustment costs.

(b) For the period from the end of the calendar year in which claims are paid by the insurer to the date payments for the operation of the assigned claims plan are due, the amount shall be determined by applying the annual yield rate specified in this subsection to the total claims payments and loss adjustment costs multiplied by a fraction, the denominator of which is 365 and the numerator of which is equal to the number of days that have elapsed between the end of the calendar year and the date payments for the operation of the assigned claims plan are due.

(2) The insurer to whom claims have been assigned shall preserve and enforce rights to indemnity or reimbursement against third parties and account to the Michigan automobile insurance placement facility for the rights and shall assign the rights to the Michigan automobile insurance placement facility on reimbursement by the Michigan automobile insurance placement facility. This section does not preclude an insurer from entering into reasonable compromises and settlements with third parties against whom rights to indemnity or reimbursement exist. The insurer shall account to the Michigan automobile insurance placement facility for any compromises and settlements. The procedures established under the assigned claims plan shall establish reasonable standards for enforcing rights to indemnity or reimbursement against third parties, including a standard establishing an amount below which actions to preserve and enforce the rights need not be pursued.

(3) An action to enforce rights to indemnity or reimbursement against a third party shall not be commenced after the later of 2 years after the assignment of the claim to the insurer or 1 year after the date of the last payment to the claimant.

(4) Payments for the operation of the assigned claims plan not paid by the due date shall bear interest at the rate of 20% per annum.

(5) The Michigan automobile insurance placement facility may enter into a written agreement with the debtor permitting the payment of the judgment or acknowledgment of debt in installments payable to the Michigan automobile insurance placement facility. A default in payment of installments under a judgment as agreed subjects the debtor to suspension or revocation of his or her motor vehicle license or registration in the same manner as for the failure by an uninsured motorist to pay a judgment by installments under section 3177.

History: Add. 1972, Act 294, Eff. Mar. 30, 1973;—Am. 1972, Act 345, Imd. Eff. Jan. 9, 1973;—Am. 1984, Act 426, Eff. Mar. 29, 1985;—Am. 2012, Act 204, Eff. Sept. 1, 2012.

Compiler's note: Enacting section 1 of Act 204 of 2012 provides:

"Enacting section 1. Sections 3172, 3173a, 3174, and 3175 of the insurance code of 1956, 1956 PA 218, MCL 500.3172, 500.3173a, 500.3174, and 500.3175, as amended by this amendatory act, take effect on the date the assigned claims plan is approved by the insurance commissioner under section 3171(3) of the insurance code of 1956, 1956 PA 218, MCL 500.3171."

Popular name: Act 218

Popular name: Essential Insurance

Popular name: No-Fault Insurance

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

500.3176 Taking costs into account in making and regulating rates.

Sec. 3176. Reasonable costs incurred in the handling and disposition of assigned claims, including amounts paid pursuant to assessments under section 3171, shall be taken into account in making and regulating rates for automobile liability and personal protection insurance.

History: Add. 1972, Act 294, Eff. Mar. 30, 1973;—Am. 1972, Act 345, Imd. Eff. Jan. 9, 1973.

Popular name: Act 218

Popular name: Essential Insurance

Popular name: No-Fault Insurance

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

500.3177 Recovery by insurer of benefits and costs from owner or registrant of uninsured motor vehicle; written agreement to pay judgment in installments; notice.

Sec. 3177. (1) An insurer obligated to pay personal protection insurance benefits for accidental bodily injury to a person arising out of the ownership, maintenance, or use of an uninsured motor vehicle as a motor vehicle may recover such benefits paid and appropriate loss adjustment costs incurred from the owner or registrant of the uninsured motor vehicle or from his or her estate. Failure of such a person to make payment within 30 days after judgment is a ground for suspension or revocation of his or her motor vehicle registration and license as defined in section 25 of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.25 of the Michigan Compiled Laws. An uninsured motor vehicle for the purpose of this section is a motor vehicle with respect to which security as required by sections 3101 and 3102 is not in effect at the time of the accident.

(2) The motor vehicle registration and license shall not be suspended or revoked and the motor vehicle registration and license shall be restored if the debtor enters into a written agreement with the secretary of state permitting the payment of the judgment in installments, if the payment of any installments is not in default.

(3) The secretary of state upon receipt of a certified abstract of court record of a judgment or notice from the insurer of an acknowledgment of debt shall notify the owner or registrant of an uninsured vehicle of the provisions of subsection (1) at that person's last recorded address with the secretary of state and inform that person of the right to enter into a written agreement with the secretary of state for the payment of the judgment or debt in installments.

History: Add. 1972, Act 294, Eff. Mar. 30, 1973;—Am. 1984, Act 426, Eff. Mar. 29, 1985.

Popular name: Act 218

Popular name: Essential Insurance

Popular name: No-Fault Insurance

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

500.3178 Annual report.

Sec. 3178. After an assigned claims plan is approved under section 3171(3), the Michigan automobile insurance placement facility board of governors shall report annually to the commissioner and the commissioner shall report to the standing committees of the senate and house of representatives with primary jurisdiction over insurance matters on the effectiveness of the assigned claims plan, including detailed demographic information on the individuals who are submitting claims and whose claims are being assigned.

History: Add. 2012, Act 204, Imd. Eff. June 27, 2012.

Popular name: Act 218

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

500.3179 Act applicable October 1, 1973.

Sec. 3179. This act applies to motor vehicle accidents occurring on or after October 1, 1973.

History: Add. 1972, Act 294, Eff. Mar. 30, 1973.

Popular name: Act 218

Popular name: Essential Insurance

Popular name: No-Fault Insurance