



Insurance Institute of Michigan

Insurance Institute of Michigan Position
Expanding No-Fault Tort Threshold
House Bill 4680
As of March 25, 2009

The Insurance Institute of Michigan (IIM) strongly opposes House Bill 4680, legislation that would expand the state's no-fault tort threshold and result in increased costs for Michigan auto insurance consumers.

Michigan is one of only twelve states which maintain a no-fault automobile insurance system. Under a no-fault system there is a delicate balance which guarantees prompt payment of medical and wage loss benefits in exchange for a limitation on the ability to sue for "pain and suffering" awards.

When Michigan's no-fault law was enacted, Michigan's Legislature established the most generous no-fault benefits in the country, but they did so in exchange for strict limitations on the right to sue an at-fault party for non-economic damages (i.e., pain and suffering awards). Michigan uses a "verbal threshold" to establish this limitation, as opposed to most other no-fault states, which have dollar limit thresholds.

House Bill 4680 would change the verbal threshold and broaden the ability to sue for non-economic damages under Michigan's no-fault law. Clearly, an expansion of litigation and increased "pain and suffering" awards can only serve to further increase the cost of automobile insurance in Michigan.

To recover non-economic tort damages in Michigan, a person must have suffered "death, serious impairment of body function" or "permanent serious disfigurement." Legislation enacted in 1995 further defined a serious impairment of body function as "an objectively manifested impairment of an important body function that affects the person's general ability to lead his or her normal life." That law also requires judges, not juries, to decide "serious impairment," with the exception of some closed-head injuries and prohibits uninsured motorists and those 50 percent or more at fault from collecting non-economic damages.

In July of 2004, the Michigan Supreme Court clarified the tort threshold in its *Kreiner v Fischer* decision. In *Kreiner*, the high court provided a multi-step process for lower courts to apply to determine if an injury meets the statutory threshold. The high court held that a court must first determine that there is no factual dispute concerning the nature and extent of the person's injuries. Second, the court must determine if an "important body function" of the plaintiff has

been impaired. Third, if the court finds that an important body function has been impaired, and that the impairment is objectively manifested, the court must determine if the impairment affects the plaintiff's general ability to lead his or her normal life. The high court noted that lower courts should compare the plaintiff's life before and after the accident as well as the significance of any affected aspects on the course of plaintiff's overall life. The *Kreiner* Court then provided some objective factors that may be used to determine plaintiff's general ability to conduct his/her normal life, including a) the nature and extent of the impairment; b) type and length of treatment required; c) duration of the impairment; d) extent of any residual impairment; and e) the prognosis for eventual recovery.

Opponents charge that the *Kreiner* decision drastically alters the definition of serious impairment of body function and will prohibit persons who suffer serious injuries from pursuing legitimate claims in the court.

However, supporters of the *Kreiner* decision argue that the case upholds the original intent of the no-fault system to allow lawsuits for non-economic damages only for the most serious of injuries.

The affordability of Michigan's no-fault insurance system relies upon the economic trade-off between immediate and comprehensive benefits, in exchange for stringent limits on non-economic damages. Any broadening of the no-fault threshold will increase costs for Michigan auto insurance policyholders.

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