

# no-fault newslines

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

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## LEGISLATIVE UPDATE-Proposed Bad Faith and Modification of the Definition of Serious Impairment

By John H. Cowley, Jr.

The following House and Senate bills were introduced in the Michigan Legislature in 2005 and if adopted would have significant impact on motor vehicle owners, insurers and motor carriers.

Senate Bill No. 25 sponsored by Senator Scott was referred to the Committee on Banking and Financial Institutions. The proposed legislation provides for a bad faith cause of action against an insurer handling an automobile insurance policy claim. The act provides in part:

An insurer obligated to pay benefits or claims under an automobile insurance policy has a duty to deal fairly and in good faith with an insured claiming the benefits. An insurer that breaches this duty to deal fairly and in good faith is liable for compensatory, consequential, and exemplary damages proximately caused by the breach.

Currently, Michigan law does not provide a cause of action for bad faith against insurers handling no-fault claims. Further, the provision for exemplary damages represents a significant departure from current Michigan law.

Senate Bill No. 433 introduced by Senator Hammerstron was referred to the Committee on Banking and Financial Institutions. This proposed legislation is designed to modify the existing priority provision which applies to claims for personal injury protection benefits in accidents involving motorcycles. The proposed revision of MCL 500.3114(5) provides that the motor vehicle insurer of the owner or registrant of the motorcycle involved in the accident would become the first in order of priority to provide no-fault benefits. Currently, the statute provides that the insurer of the owner or registrant of the motor vehicle involved in the accident would be in the highest order of priority.

Senate Bill No. 618 introduced by Senators Jacobs and George was referred to the Committee on Banking and Financial Institutions. This legislation proposes substantial changes to the no-fault statute, including redefining the tort threshold, increasing minimums for bodily injury

### SECRET WARDLE NOTES:

Some members of the Michigan Legislature are attempting to reduce the impact of the Supreme Court's Kreiner decision by proposed revisions to the definition of "serious impairment of body function," in addition to creating a cause of action against insurers for alleged "bad faith" in the handling of no-fault claims. These proposals have not proceeded beyond the committee level as of this date. The *No-Fault Newslines* will continue to monitor these proposals, which if enacted would significantly affect owners, insurers and motor carriers.

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coverage to 100/200 and requiring a mandatory offer of uninsured motorist and underinsured motorist coverage.

The first of two proposed modifications of the definition of serious impairment of body function is as follows:

Serious impairment of body function means an objectively manifested injury or impairment involving an important body function that affects or affected the person's life in a manner, for a time, that was not clearly frivolous.

This would certainly be a significant departure from the current definition of "serious impairment" which provides that serious impairment of a body function means an objectively manifested injury or impairment of an important body function that affects the person's general ability to lead his or her normal life.

In addition to the Senate version, another proposal has been submitted to the House for consideration. House Bill No. 4739 introduced by Representative Lipsey and others, also proposes to modify of the definition of serious impairment of body function. This proposed legislation provides as follows:

Serious impairment of body function means an objectively manifested injury involving an important body function that in some way and for some time, affected the injured person's ability to lead his or her normal life.

Obviously, this legislation would result in a significant lowering of the bar for recovery of non-economic damages in the State of Michigan.

If you would like to review the aforementioned proposed legislation in its entirety, please visit [www.legislature.mich.gov](http://www.legislature.mich.gov). The *No-Fault Newslines* will continue to keep you advised of proposed or enacted legislation which affects owners, insurers and motor carriers in the State of Michigan.

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We welcome your questions and comments.

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