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## **I. THE STATE OF MICHIGAN**

### **A. *FREQUENTLY CITED MICHIGAN STATUTES***

#### **1. General Considerations in Insurance Claims Management**

##### **M.C.L.A. § 29.4**

###### Reporting of Fires; Release of Information by Insurance Companies

Fire investigators and fire prevention officials may request an insurer investigating a fire loss of real or personal property release all information in possession of the agent relative to the loss. If an insurer has reason to suspect a fire loss was caused by incendiary means, the insurer must notify the fire investigating agency and furnish them with all relevant material acquired during its investigation of the fire loss.

##### **M.C.L.A. § 29.6**

###### Fire Marshal Investigative Authority

State fire marshal may investigate and inquire into fire cause and origin that results in death or property damage, and without restraint or trespass liability.

##### **M.C.L.A. § 257.1106**

###### Death, Injury or Damages Caused by Uninsured Motorist; Application for Payment from Fund

Where the death of or personal injury or property damage to any person or property is occasioned by an uninsured motor vehicle, any person who would have a cause of action against the owner or driver of the uninsured motor vehicle in respect to the death or personal injury or property may make application for payment out of the Motor Vehicle Accident Claims Act fund for all damages in respect to the death or personal injury and for damages in excess of \$200.00 in respect to property damage.

##### **M.C.L.A. § 257.1123**

###### Maximum Payments for Death, Injury or Property Damage

In respect to applications under the Motor Vehicle Accident Claims Act for payment of damages arising out of motor vehicle accidents, the secretary shall not pay out of the fund:

- (1) More than \$20,000.00, exclusive of costs, on account of injury to or the death of one person, and, subject to such limit for any one person so injured or killed, not more than \$40,000.00, exclusive of costs, on account of injury to or the death of two or more persons in any one accident; and
- (2) More than \$10,000.00, exclusive of costs, for loss of or damage to property resulting from any one accident.

##### **M.C.L.A. § 436.1801(3)**

###### Liquor Liability

Right of action of person killed, injured, or damaged by unlawful sale or providing of alcohol to minor or visibly intoxicated person, if the unlawful sale is proven to be a proximate cause of the damage, injury or death.

##### **M.C.L.A. § 500.2006**

###### Timely Payment of Claims or Interest; Proof of Loss; Calculation of Interest; Exemptions

An insurer must pay on a timely basis to its insured the benefits provided under the terms of its policy, or, in the alternative, the insurer must pay to its insured twelve percent interest on claims not paid on a timely basis. Failure

to pay claims on a timely basis or to pay interest on claims is an unfair trade practice unless the claim is reasonably in dispute.

An insurer shall specify, in writing, the materials that constitute a satisfactory proof of loss not later than thirty (30) day after receipt of a claim, unless the claim is settled within the thirty (30) days. If proof of loss is not supplied as to the entire claim, the amount supported by proof of loss shall be considered paid on a timely basis if paid within sixty (60) days after receipt of proof of loss by the insurer.

An “insurer” now includes a nonprofit dental care corporation.

### **M.C.L.A. § 500.2026**

#### Unfair Claims Practices

- (1) Unfair or deceptive acts or practices in the business of insurance include, but are not limited to:
  - a) Misrepresenting pertinent facts or insurance policy provisions relating to coverage at issue;
  - b) Failing to acknowledge promptly or to act reasonably and promptly upon communications with respect to claims arising under insurance policies;
  - c) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;
  - d) Refusing to pay claims without conducting a reasonable investigation based upon the available information;
  - e) Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed; and
  - f) Failing to attempt in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear.
- (2) The failure of an insurer to maintain a complete record of all the complaints of its insureds which it has received since the date of the last examination is an unfair method of competition and unfair or deceptive act or practice in the business of insurance.

### **M.C.L.A. § 500.2845**

#### Insured Real Property Fire Proceeds

If a claim is filed for a loss to insured real property due to fire or explosion and a final settlement is reached on the loss to the insured real property, an insurer shall withhold from payment twenty-five (25) percent of the actual cash value of the insured real property at the time of the loss or twenty-five (25) percent of the final settlement, whichever is less. For residential property, the twenty-five (25) percent settlement or judgment withheld shall not exceed \$6,000.00 adjusted annually beginning June 1, 1999, in accordance with the Consumer Price Index.

### **M.C.L.A. § 500.4503**

#### Fraudulent Insurance Acts

In general, a person commits insurance fraud if they present or prepare any oral or written statement supporting an application or claim for insurance while knowing the statement is false, either in whole or in part. Updated in 2015.

### **M.C.L.A. § 500.4507**

#### Release of Information to Authorized Agency or Insurer

Upon written request by an authorized agency, an insurer may release to the authorized agency, at the authorized agency's expense, any or all information that is considered important relating to any suspected insurance fraud.

An authorized agency may release information on suspected insurance fraud to an insurer upon a showing of good cause. This information may include, but is not limited to, the following:

- (1) Insurance policy information relevant to an investigation, including any application for a policy;
- (2) Policy premium payment records that are available;
- (3) History of previous claims made by the insured, and/or
- (4) Information relating to the investigation of the suspected insurance fraud, including statements of any person, proofs of loss, and notice of loss.

**M.C.L.A. § 500.4509**

Report of Information Concerning Insurance Fraud

In the absence of malice in a prosecution for insurance fraud, any person who cooperates with an authorized agency or complies with a court order to provide evidence or testimony is not subject to civil liability with respect to any act concerning the suspected insurance fraud, unless that person knows that the evidence, information, testimony, or matter contains false information pertaining to any material fact or thing.

**M.C.L.A. § 500.4511**

Violations; Penalties

A person who commits insurance fraud is guilty of a felony punishable by imprisonment for not more than four (4) years or a fine of not more than \$50,000.00, or both, and restitution. A person who enters into an agreement or conspiracy to commit insurance fraud is guilty of a felony punishable by imprisonment for not more than ten (10) years or by a fine of not more than \$50,000.00, or both, and shall be ordered to pay restitution.

**2. Automobile Insurance**

**M.C.L.A. § 500.3009**

Minimum Auto Insurance Limits

An automobile liability policy insuring against loss resulting from liability imposed by law for property damage, bodily injury, or death suffered by any person arising out of the ownership, operation, maintenance, or use of a motor vehicle shall not be issued to any motor vehicle unless the liability coverage is subject to a limit, exclusive of interest and costs of:

- (1) Not less than \$20,000.00 because of bodily injury to or death of one person in any one accident, and subject to that limit for one person;
- (2) To a limit of not less than \$40,000.00 because of bodily injury to or death of two or more persons in any one accident; and
- (3) To a limit of not less than \$10,000.00 because of injury to or destruction of property of others in any accident.

The policy, or declaration page, must have the proper warning on its face for the insured to exclude a named person from coverage.

**M.C.L.A. § 500.3010**

Loss or Damage Caused by Fire or Explosion to Motor Vehicle

An automobile insurer shall not pay a claim of \$2,000.00 or more for loss or damage caused by fire or explosion to an insured motor vehicle until a report has been submitted to the fire or law enforcement authority designated and the insurer has received from the insured a copy of the report.

This section does not apply to accidental fires or explosions. If the insurer or the fire or law enforcement authority designated determines that the fire or explosion may not be accidental, the insurer shall notify the insured of the requirement for a report under this section by no later than thirty (30) days after the determination.

**M.C.L.A. § 500.3105**

Personal Protection Benefits; Accidental Bodily Injury

- (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.
- (2) Personal protection insurance benefits are due 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.

**M.C.L.A. § 500.3107**

Allowable Medical Expenses and Accommodations

Personal protection insurance benefits are payable for the following:

Allowable expenses consisting of all reasonable charges incurred for reasonably necessary products, services, and accommodations for an injured person's care, recovery, or rehabilitation;

- (1) Work loss consisting of loss of income from work an injured person would have performed during the first three (3) years after the date of the accident if he or she had not been injured. The statutory maximum is based upon a schedule which is periodically adjusted for inflation;
- (2) Replacement services or 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 three (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; and
- (3) Personal protection insurance benefits payable under subsection (1) does not cover (a) persons 60 years of age or older, or (b) the medical use of marijuana.

**M.C.L.A. § 500.3112**

Payees of Personal Protection Benefits; Payments as Discharge of Liability

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 of personal protection insurance 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, the insurer and the claimant may apply to the circuit court for an appropriate order. In the absence of a court order the insurer may pay:

- (1) To the dependents of the injured person, the personal protection insurance benefits accrued before his death without appointment of an administrator or executor; and
- (2) To the surviving spouse, the personal protection insurance benefits due any dependent children living with the spouse.

**M.C.L.A. § 500.3113**

Persons Not Entitled to Personal Protection Benefits

A person is not entitled to be paid personal protection insurance benefits for accidental bodily injury if at the time of the accident:

- (1) The person was using a motor vehicle or motorcycle which he or she had taken unlawfully, unless the person reasonably believed that he or she was entitled to take and use the vehicle;
- (2) The person was the owner or registrant of a motor vehicle involved in the accident and failed to maintain the security for payment of benefits under personal and property protection insurance;
- (3) The person was not a resident of Michigan, was an occupant of a motor vehicle not registered in Michigan, and was not insured by an insurer which has filed a certification for nonresidents;
- (4) The person operating was named as an excluded operator; and/or
- (5) The person was operating an excluded motor vehicle.

**3. General Liability Considerations**

**M.C.L.A. § 418.131**

Employer-Employee Recovery; Remedies

The right to the recovery of Workers' Compensation benefits shall be the employee's exclusive remedy against the employer for a personal injury or occupational disease resulting from the employment. An employer can be held liable for an intentional tort where an employee is injured as a result of a deliberate act of the employer and the employer specifically intended the injury. An employer is presumed to have intended to injure the employee if the employer had knowledge that an injury was certain to occur and willfully disregarded that knowledge.

**M.C.L.A. § 600.1483**

Medical Malpractice Damages Cap

In a medical liability action, total noneconomic damages recoverable by all plaintiffs against all defendants are limited to \$280,000.00, adjusted annually for inflation, except in cases where the plaintiff is hemiplegic, paraplegic, or quadriplegic due to an injury to the brain or spinal cord, or where the plaintiff had permanently impaired cognitive capacity, or the plaintiff has had a permanent loss of or damage to a reproductive organ, then noneconomic damages shall not exceed \$500,000.00.

**M.C.L.A. § 600.2913**

Parental Liability for Minor Child's Willful Injury or Damage

Person or organization can recover damages in an amount not to exceed \$2,500.00 from parent(s) of resident minor child of parent(s) when the minor has willfully or maliciously caused injury or damaged property.

**M.C.L.A. § 600.2922**

Wrongful Death Actions

Whenever the death of a person is caused by a wrongful act, neglect, or fault of another and the act would have entitled the party injured to maintain an action and recover damages if death had not ensued, the party that would have been liable shall be liable to an action for damages. Every action under this section shall be brought by, and in the name of, the personal representative of the estate of the deceased. The people entitled to damages by being damaged by the death only include the decedent's spouse, parents, children, descendants, grandchildren, brothers and sisters, grandparents, the children of the decedent's spouse, and those who are devisees under the will of the deceased, and those entitled to share in the state under the laws of intestate succession.

**M.C.L.A. § 600.2925a**

Contribution Between Tortfeasors

When two or more persons become jointly or severally liable in tort for the same injury to a person or property, there is a right of contribution among them even if a judgment has not been recovered against all or any of them.

The right of contribution exists only in favor of a tortfeasor who has paid more than his *pro rata* share of the common liability, and his total recovery is limited to the amount paid by him in excess of his *pro rata* share. A tortfeasor against whom contribution is sought shall not be compelled to make contribution beyond his own *pro rata* share of the entire liability.

**M.C.L.A. § 600.2946**

Product Liability Actions

In product liability actions, evidence that a product was in accordance with the prevailing industry standards at the time is admissible. A manufacturer or seller is not liable unless a plaintiff establishes that the product was not reasonably safe at the time the specific unit of the product left the control of the manufacturer or seller and, according to generally accepted production practices at the time, a practical and technically feasible alternative production practice was available that would have prevented the harm without significantly impairing the usefulness or desirability of the product to users and without creating equal or greater risk of harm to others.

There is a rebuttable presumption that the manufacturer or seller is not liable if the aspect of the product allegedly causing the harm was in compliance with federal or state standards, or was in compliance with regulations or standards relevant to the event causing the death or injury promulgated by a federal or state agency responsible for reviewing the safety of the product. However, noncompliance does not create a presumption of negligence.

**M.C.L.A. § 600.2946a**

Product Liability Actions; Caps on Damages

In an action for product liability, the total noneconomic damages shall not exceed \$280,000.00, adjusted annually for inflation, unless the defect in the product caused either the person's death or permanent loss of a vital bodily function, in which case the total amount of damages for noneconomic loss shall not exceed \$500,000.00.

In awarding damages in a product liability action, the trier of fact shall itemize damages into economic and noneconomic losses. Neither the court nor counsel for a party shall inform the jury of the limitations. The court shall adjust an award of noneconomic loss to conform to the limitations.

**M.C.L.A. § 600.2959**

Comparative Fault

In a tort action, the court shall reduce the damages by the percentage of comparative fault of the person upon whose injury or death the damages are based. If the plaintiff's percentage of fault is greater than the aggregate fault of the other person or persons, whether or not parties to the action, the court shall reduce economic damages by the percentage of comparative fault of the person upon whose injury or death the damages are based, and noneconomic damages shall not be awarded.

**M.C.L.A. § 600.6304**

Joint and Several Liability

The trier of fact must allocate liability among nonparties, even in medical malpractice cases where the plaintiff is not at fault, before joint and several liability is imposed on each defendant. Once joint and several liability is determined to apply, joint and several liability prohibits the limitation of damages to each defendant's respective percentage of fault.

**M.C.L.A. § 691.1407**

Governmental Immunity from Tort Liability

A governmental agency is immune from tort liability if the governmental agency is engaged in the exercise or discharge of a governmental function.

An officer, employee, member, or volunteer of the governmental agency is immune from tort liability caused while acting on behalf of the government agency if the following three conditions are met:

- (1) The officer, employee, member, or volunteer is acting or reasonably believes he or she is acting within the scope of his or her authority;
- (2) The governmental agency is engaged in the exercise or discharge of a governmental function; and
- (3) The officer's, employee's, member's, or volunteer's conduct does not amount to gross negligence that is the proximate cause of the injury or damage.

The immunity does not extend to providing medical care or treatment to a patient, except in search and rescue operations.

Judges, legislators, and the highest elected executive official are immune when acting within the scope of his or her judicial, legislative, or executive authority.

**4. Miscellaneous Statutes**

**M.C.L.A. § 24.264**

Declaratory Judgment Actions

Unless an exclusive procedure or remedy is provided by a statute governing the agency, the validity or applicability of a rule may be determined in an action for declaratory judgment when the court finds that the rule or its threatened application interferes with or impairs, or imminently threatens to interfere with or impair, the legal rights or privileges of the plaintiff.

**M.C.L.A. § 600.2157**

Waiver of Physician-Patient Privilege

In any personal injury or malpractice suit, if the plaintiff produces a physician as a witness who has treated the patient for the injury or for any disease or condition for which the malpractice is alleged, that patient is considered to have waived the privilege provided in this section as to another physician who has treated the patient for the injuries, disease, or condition. Preempted by *Thomas v. 1156729 Ontario Inc.*, 979 F. Supp. 2d 780 (E.D. Mich. 2013).

**M.C.L.A. § 600.6303**

Collateral Source Benefits; Subrogation

In a personal injury action in which the plaintiff seeks to recover expenses, evidence that the expense or loss was paid or is payable by collateral source is admissible. The collateral source provider is joined after a verdict for the plaintiff is rendered and before a judgment is entered on the verdict. If the court determines that all or part of the plaintiff's economic damages are payable by a collateral source, the court will reduce the part of the judgment which represents damages paid or payable. This reduction shall not exceed the amount of the judgment for economic loss or that portion of the verdict which represents damages paid or payable by a collateral source.

Within ten (10) days after a verdict for the plaintiff, plaintiff's attorney shall send notice of the verdict to all persons entitled by contract to a lien against the proceeds of plaintiff's recovery. If a contractual lienholder does

not exercise the lienholder's right of subrogation within twenty (20) days after receipt of the notice of the verdict, the lienholder shall lose the right of subrogation.