

SENATE BILL NO. 111

INTRODUCED BY J. SONJU, JONES, RANDALL, STAHL, TAYLOR, VANCE

A BILL FOR AN ACT ENTITLED: "AN ACT LIMITING LIABILITY FOR NONECONOMIC LOSS ARISING OUT OF OPERATION OF A MOTOR VEHICLE; AND REQUIRING CERTAIN INSURERS TO REPORT TO THE ECONOMIC AFFAIRS INTERIM COMMITTEE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Limitation on liability for noneconomic loss arising out of operation of motor vehicle -- presumption -- application -- definition. (1) (a) Except as otherwise provided in this section, a party in any civil action for injury or death arising out of the operation of a motor vehicle may not recover an award of damages for past or future noneconomic loss if the party, at the time the conduct causing the death or injury occurred, was in violation of:

(i) the requirement for motor vehicle insurance under 61-6-301;

(ii) the prohibition against driving under the influence of alcohol or drugs under 61-8-401; or

(iii) the prohibition against the operation of a vehicle by a person with a certain alcohol concentration under 61-8-406.

(b) A claim for noneconomic loss may not be considered by the trier of fact if the trier of fact determines that the limitation on liability established by this section applies to the claim for noneconomic loss.

(2) For the purpose of the limitation on liability established by this section, a person is conclusively presumed to have been in violation of 61-6-301, 61-8-401, or 61-8-406 if the person is convicted in a criminal proceeding of one or more of those offenses. If a party has not been convicted of violating 61-6-301, 61-8-401, or 61-8-406, the opposing party may establish by a preponderance of the evidence that a violation of 61-6-301, 61-8-401, or 61-8-406 occurred at the time of the conduct causing the death or injury.

(3) The limitation on liability established by this section does not apply if the death or injury resulted from conduct that:

(a) constituted an intentional tort;

(b) would have constituted a violation of the prohibition against reckless driving under 61-8-301 at the time the conduct causing the death or injury occurred; or

1 (c) would have constituted a felony at the time the conduct causing the death or injury occurred.

2 (4) The limitation on liability established by this section based on a violation of the requirement for motor
3 vehicle insurance under 61-6-301 does not apply if the ~~person~~ DRIVER in violation:

4 (a) was insured under a motor vehicle liability policy within 180 days before the conduct causing the
5 death or injury occurred; and

6 (b) has not operated a motor vehicle in violation of 61-6-301 within the 1-year period immediately
7 preceding the date on which coverage under the motor vehicle liability policy lapsed.

8 (5) THE LIMITATION ON LIABILITY ESTABLISHED BY THIS SECTION BASED ON A VIOLATION OF THE REQUIREMENT
9 FOR MOTOR VEHICLE INSURANCE UNDER 61-6-301 DOES NOT APPLY IF, AT THE TIME THE CONDUCT CAUSING THE DEATH
10 OR INJURY OCCURRED, THE CLAIMANT WAS NOT OPERATING OR WAS NOT A PASSENGER IN THE CLAIMANT'S UNINSURED
11 MOTOR VEHICLE.

12 ~~(5)~~(6) As used in this section, "noneconomic loss" means subjective, nonmonetary loss, including but
13 not limited to:

14 (a) physical and mental pain or suffering;

15 (b) emotional distress;

16 (c) inconvenience;

17 (d) subjective, nonmonetary loss arising from physical impairment or disfigurement;

18 (e) loss of society, companionship, and consortium, other than household services;

19 (f) injury to reputation; and

20 (g) humiliation.

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22 NEW SECTION. SECTION 2. INSURERS REQUIRED TO REPORT TO ECONOMIC AFFAIRS INTERIM COMMITTEE.

23 NO LATER THAN SEPTEMBER 15, 2012, AN AUTHORIZED INSURER THAT PROVIDES MOTOR VEHICLE LIABILITY COVERAGE
24 UNDER TITLE 33, CHAPTER 23, PART 2, SHALL REPORT TO THE ECONOMIC AFFAIRS INTERIM COMMITTEE ESTABLISHED
25 UNDER 5-5-223 THE IMPACT OF [SECTION 1] ON PREMIUM RATES CHARGED BY THE INSURER BETWEEN [THE EFFECTIVE
26 DATE OF THIS ACT] AND JULY 31, 2012.

27
28 NEW SECTION. Section 3. Codification instruction. [Section 1] is intended to be codified as an
29 integral part of Title 27, chapter 1, part 7, and the provisions of Title 27, chapter 1, part 7, apply to [section 1].

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