

1990 BILL 5

Second Session, 22nd Legislature, 39 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 5

INSURANCE AMENDMENT ACT, 1990

MR. EVANS

First Reading	
Second Reading	
Committee of the Whole	
Third Reading	
Royal Assent	12

BILL 5

1990

INSURANCE AMENDMENT ACT, 1990

(Assented to _____, 1990)

HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of Alberta, enacts as follows:

1 *The Insurance Act is amended by this Act.*

2 *Section 21.4 is amended*

(a) *in subsection (5) by striking out "or revocation referred to in section 537(1)(b), the suspension or revocation" and substituting " , revocation or levy of a penalty referred to in section 537(1), the insurance council's decision";*

(b) *in subsection (9) by striking out "or revocation" and substituting " , revocation or levy of a penalty".*

3 *Section 22 is amended*

(a) *in clause (a.04) by striking out "portions of";*

(b) *in clause (a.12) by striking out "exceptions to the 183-day continuing membership" and substituting "the continuing membership period";*

(c) *by adding the following after clause (h.1):*

(h.11) *prescribing the amount of penalties to be levied under sections 517(2) and 533(3) and respecting the time for payment and the disposition of, and other matters relating to, those penalties;*

Explanatory Notes

1 This Bill will amend chapter I-5 of the Revised Statutes of Alberta 1980.

2 Section 21.4 presently reads in part:

(5) If the appeal to the Superintendent involves a suspension or revocation referred to in section 537(1)(b), the suspension or revocation does not take effect until at least after the disposition of the appeal by the Superintendent.

(9) If the Superintendent's decision on an appeal involves a refusal, suspension or revocation described in section 537(1), the person given a right to appeal by section 537(2) may appeal that decision under section 537, and that section applies, as if that decision had originally been made by the Superintendent.

3 Section 22 presently reads in part:

22 *The Lieutenant Governor in Council may make regulations*

(a.04) respecting the fixing of fees and additional special levies for services provided or to be provided by the insurance councils, and respecting the basis for such fees and levies and their collection by the councils and the means of enforcing their payment and the remittance of portions of the fees collected to the Provincial Treasurer;

(a.12) prescribing classes of insurance and exceptions to the 183-day continuing membership for the purposes of section 29.1(1);

4 Section 29.1(1) is amended by striking out ", unless otherwise prescribed by those regulations, for 183 days" and substituting "for the period so prescribed".

5 Sections 313 and 314 are repealed and the following is substituted:

313(1) In this section,

(a) "benefits" means accident insurance benefits provided for in this section or in regulations made under subsection (9)(c);

(b) "prescribed" means provided for by regulations made under this section.

(2) A contract evidenced by a motor vehicle liability policy insures in respect of an accident involving an automobile, for accident insurance benefits payable to the prescribed person, in or to at least the prescribed amounts and in accordance with or subject to this section and the prescribed terms, conditions, restrictions and exclusions.

(3) The insurer, on the death of an insured person, shall pay

(a) death benefits, and

(b) actual funeral costs up to the prescribed maximum amount.

(4) If an insured person is totally disabled, the insurer shall pay a weekly disability benefit.

(5) The insurer shall pay the prescribed medical payments.

(6) Section 327 applies to the benefits.

(7) Subject to section 341, the rates to be prescribed for the benefits shall be the same within each class of vehicle insured by an insurer in Alberta.

(8) The rates for the benefits shall be shown on the motor vehicle liability policy separately from the rates for any additional or other coverages under the policy.

(9) The Lieutenant Governor in Council may make regulations

4 Section 29.1(1) presently reads:

29.1(1) Where a compensation association has been designated by the regulations under section 22 for any of the classes of insurance prescribed by those regulations, then, subject to subsection (2), every insurer, while licensed to carry on that class of insurance and, unless otherwise prescribed by those regulations, for 183 days after ceasing to be so licensed, is a member of that compensation association.

5 Sections 313 and 314 presently read:

313(1) On and after April 1, 1972 every contract evidenced by a motor vehicle liability policy (whether made or renewed before, on or after that date) insures in respect of any one accident involving an automobile, for accident insurance benefits to at least the amounts specified in this section.

(2) The insurer shall pay death benefits on the death of an insured person based on the age and status of the deceased insured person at the date of the accident in a household where the head of the household or the spouse or dependent relative of the deceased survive (in this section called the "principal sum") in accordance with the following table:

STATUS OF DECEASED AT DATE OF ACCIDENT

<i>Age of Deceased at Date of Accident</i>	<i>Head of Household</i>	<i>Spouse in 2 Parent Household</i>	<i>Dependent Relative</i>
<i>Up to age 4 years</i>	<i>\$.....</i>	<i>\$.....</i>	<i>\$ 500</i>
<i>5 to 9 years</i>	<i>.....</i>	<i>.....</i>	<i>1000</i>
<i>10 to 17 years</i>	<i>5000</i>	<i>5000</i>	<i>1500</i>
<i>18 to 64 years</i>	<i>5000</i>	<i>5000</i>	<i>1000</i>
<i>65 to 69 years</i>	<i>5000</i>	<i>5000</i>	<i>1000</i>
<i>70 years and over</i>	<i>5000</i>	<i>5000</i>	<i>500</i>

(3) If the head of the household dies, in addition to the principal sums paid in accordance with subsection (2), the insurer shall pay 20% of the principal sum payable for the death of the head of the household, for each survivor other than the first.

(4) In addition to subsections (2) and (3), if the head of the household dies, and

(a) there are 2 or more survivors, the insurer shall pay 1% of the total of the principal sum and the sum payable under subsection (3), or

- (a) respecting any matter or thing that by this section may or is to be prescribed;
- (b) defining for the purposes of this section any expression used in it;
- (c) increasing the amount of any of the benefits.

(b) when there is one survivor, the insurer shall pay 1% of the principal sum payable for the death of the head of the household,

per week for a period of 104 weeks or until

(c) in the case of clause (a), the death of all survivors, or

(d) in the case of clause (b), the death of the survivor

whichever occurs first.

(5) The insurer shall pay actual funeral costs up to a maximum of \$1000 in respect of the death of each insured person as a result of an automobile accident.

(6) In the event of the total disability of an insured person, the insurer shall pay, except for the first 7 days, a weekly benefit of 80% of the gross weekly earnings of the insured person, to a maximum of \$105 a week and a minimum of \$40 a week, for a period of 104 weeks or until the injury ceases to be a total disability, whichever period is shorter, if

(a) the insured person was employed at the date of the accident, and

(b) the total disability prevents him from performing every duty pertaining to his occupation or employment.

(6.1) The insurer shall in respect of a contract issued or renewed after May 31, 1982,

(a) in the event of the total disability of an insured person, and

(b) except for the first 7 days,

pay a weekly benefit of 80% of the gross weekly earnings of the insured person, to a maximum of \$150 a week, for a period of 104 weeks or until the injury ceases to be a total disability, whichever period is shorter, if

(c) the insured person was employed at the date of the accident, and

(d) the total disability prevents him from performing every duty pertaining to his occupation or employment.

(6.2) All contracts that were subsisting on June 1, 1982 shall be deemed to provide for the payments referred to in subsection (6.1) in respect of an accident arising out of the use or operation of an automobile occurring after May 31, 1982.

(7) Section 327 applies to the accident insurance benefits under this section.

(8) The rates for the accident insurance benefits specified in this section shall be the same within each class of vehicle insured by an insurer in Alberta subject to the provisions relating to

- (a) an increase in rates, and*
- (b) a change of class of a vehicle,*

contained in section 341.

(9) The rates for the accident insurance benefits in this section shall be shown separately on the motor vehicle liability policy from the rates for any additional or other benefits under the policy.

(10) In this section,

- (a) "common law spouse" means any man or woman who although not legally married to a person lives and cohabits with that person as the spouse of that person and is known as such in the community in which they have lived;*
- (b) "survivor" means spouse or dependent relative.*

(11) If a deceased insured leaves no surviving spouse and it is established to the satisfaction of a court that

- (a) for the 5-year period immediately preceding his death the deceased insured cohabited with a common law spouse, or*
- (b) for the 2-year period immediately preceding his death the deceased insured cohabited with a common law spouse by whom he had one or more children,*

the benefits to which a spouse would have been entitled under this section shall be paid to that common law spouse.

314 The Lieutenant Governor in Council may make regulations

- (a) prescribing the exclusions, conditions, restrictions and terms and conditions permitted with respect to the accident insurance benefits to be provided under section 313;*
- (b) defining any word or expression used in section 313;*
- (c) adding to or increasing the accident insurance benefits under section 313.*

6 *Section 517 is repealed and the following is substituted:*

517(1) If, after due investigation by the Superintendent or his accredited representative, the Superintendent decides that the holder or a former holder of a certificate of authority

(a) has been guilty of misrepresentation, fraud, deceit or dishonesty,

(b) has contravened any provision of the *Canadian and British Insurance Companies Act* (Canada), the *Foreign Insurance Companies Act* (Canada), this Act or the regulations or any rule made for the purpose of this Act,

(c) has unreasonably failed to pay over to the insurer or agent entitled to it any money collected by him and retained beyond the term stipulated in his agency contract,

(d) has placed insurance with an insurer not licensed in Alberta under this Act without complying with the provisions of this Act relating to unlicensed insurance, or

(e) has demonstrated his incompetency or untrustworthiness to transact the insurance agency business for which the certificate of authority was granted by reason of anything done or omitted in or about the business under the authority of the certificate,

the Superintendent may, in the case of such a holder, revoke or suspend the certificate and that holder or former holder is liable to a penalty under this section.

(2) The Superintendent may, by notice in writing,

(a) levy a penalty against a certificate holder instead of or in addition to revoking or suspending his certificate under subsection (1), or

(b) levy a penalty against a former certificate holder,

in the amount prescribed in the regulations.

(3) If a penalty levied against a certificate holder under subsection (2) is not paid within 30 days of the serving of the written notice of the levy and the decision of the Superintendent is not appealed under this Act, the certificate becomes suspended immediately following the last date for paying the penalty or appealing the decision and remains suspended until the penalty is paid, the certificate expires or the levy is cancelled.

6 Section 517 presently reads:

517 A certificate of authority may be revoked or suspended by the Superintendent if, after due investigation by him or his accredited representative, he determines that the holder of the certificate

(a) has been guilty of misrepresentation, fraud, deceit or dishonesty,

(b) has contravened any of the provisions of the Canadian and British Insurance Companies Act (Canada) or the Foreign Insurance Companies Act (Canada), or of this Act or any rule or regulation made for the purpose of this Act,

(c) has unreasonably failed to pay over to the insurer or agent entitled thereto any money collected by him and retained beyond the term stipulated in his agency contract or agreement,

(d) has placed insurance with insurers other than those licensed in Alberta under this Act, without complying with the provisions in this Act relating to unlicensed insurance, or

(e) has demonstrated his incompetency or untrustworthiness to transact the insurance agency business for which the licence has been granted, by reason of anything done or omitted in or about the business under the authority of the licence.

(4) Where a certificate is suspended by virtue of subsection (3) and remains suspended when the certificate expires, the holder of that certificate is not eligible to apply for or to receive, and the Superintendent shall not grant him, a new certificate of authority until the penalty is paid or the levy is cancelled.

(5) A penalty need not be paid while the decision imposing it is under appeal.

(6) Where any amount of the penalty is due and is not paid, that amount bears interest at the prescribed rate from the last date for paying it.

(7) The Superintendent may not levy a penalty under this section more than 3 years after the act, or, if the activity is of a continuing nature, the termination of the activity, complained of.

7 Section 533 is amended

(a) by repealing subsection (1) and substituting the following:

533(1) If, after due investigation by the Superintendent or his accredited representative, the Superintendent decides that the holder or a former holder of an adjuster's certificate has contravened this Act or has been guilty of fraudulent practices or is untrustworthy or incompetent, the Superintendent may, in the case of such a holder, revoke or suspend the certificate and that holder or former holder is liable to a penalty under this section.

(b) by adding the following after subsection (2):

(3) Section 517(2) to (7), as those subsections apply in relation to a certificate of authority, apply in relation to an adjuster's certificate.

8 Section 537 is amended

(a) by repealing subsections (1) and (2) and substituting the following:

537(1) If the Superintendent

(a) refuses an application for a certificate or licence to act as an agent, adjuster or broker,

(b) suspends or revokes a certificate or licence of an agent, adjuster or broker, or

(c) levies a penalty under section 517(2) or 533(3)

7 Section 533 presently reads:

533(1) An adjuster's certificate shall be revoked or suspended by the Superintendent if, after due investigation by himself or his accredited agent, whose report he may adopt, he determines that the holder of the certificate has contravened this Act or has been guilty of fraudulent practices or is untrustworthy or incompetent.

(2) No person whose certificate has been revoked shall be granted another certificate until the lapse of a period of one year thereafter, nor shall he, until again authorized, act as an employee, or participate in the profits, of any insurance adjuster.

8 Section 537 presently reads in part:

537(1) If the Superintendent

(a) refuses an application for a certificate of authority or licence to act as an agent, adjuster or broker, or

(b) suspends or revokes a certificate of authority or licence of an agent, adjuster or broker,

he shall notify the applicant or the agent, adjuster or broker in writing of the refusal, suspension or revocation, stating his reasons for it.

(2) An applicant who has been refused a certificate of authority

against the holder or a former holder of a certificate,

the Superintendent shall notify the person adversely affected by his decision in writing of his decision, stating his reasons for it.

(2) The person adversely affected by a decision referred to in subsection (1)(a), (b) or (c) may appeal the decision by serving the Minister with a notice of appeal within 30 days of being notified in writing of the decision.

(b) in subsection (5) by striking out “or revocation” and substituting “, revocation or levy of a penalty”;

(c) in subsection (6)

(i) in clause (a) by striking out “or cancellation” and substituting “, cancellation or levy of a penalty”;

(ii) by striking out “or” at the end of clause (c), by adding “, or” at the end of clause (d), and by adding the following after clause (d):

(e) cancel the levy of a penalty or vary the time for its payment.

9 This Act comes into force on Proclamation.

or licence to act as an agent, adjuster or broker by the Superintendent, or an agent, adjuster or broker whose certificate of authority or licence has been suspended or revoked by the Superintendent may appeal the refusal, suspension or revocation by serving the Minister with a notice of appeal within 30 days of being notified in writing of the refusal, suspension or revocation.

(5) A suspension or revocation by the Superintendent that is appealed under subsection (2) does not take effect until after the hearing and disposition of the appeal by the appeal board.

(6) An appeal board that hears an appeal under this section may, by order, either

- (a) confirm the refusal, suspension or cancellation,*
- (b) order that the certificate of authority or licence be issued,*
- (c) cancel the revocation of the certificate of authority or licence or substitute a period of suspension, or*
- (d) cancel or vary the suspension.*

9 Coming into force.