

Bill 53
Mr. Renner

BILL 53

2003

INSURANCE AMENDMENT ACT, 2003 (NO. 2)

(Assented to , 2003)

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

Amends RSA 2000 cl-3

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

**2 Section 25 is amended by renumbering it as section 25(1)
and by adding the following after subsection (1):**

(2) If, at any time during a year, a provincial or extra-provincial
company that is licensed ceases to have an adequate base capital
as required under subsection (1)(a), the company must promptly

- (a) give written notice of that fact to the Superintendent, and
- (b) cease to undertake or to offer to undertake insurance in
Alberta

until the Superintendent gives written notice to the company that
the Superintendent is satisfied that the company's base capital
once again meets the requirements of subsection (1)(a).

**3 Section 511(1) is amended by adding the following after
clause (a):**

- (a.1) governing the relationships among, and the duties and functions of, insurers, insurance agents and insurance brokers;

4 Section 608 is repealed and the following is substituted:

Definitions

608 In this Subpart,

- (a) “accident” means an accident arising from the use or operation of an automobile;
- (b) “accident claim” means a claim for loss or damages from bodily injury or death arising from an accident;
- (c) “basic coverage” means insurance coverage required or provided for under sections 627 and 629;
- (d) “contract” means a contract of automobile insurance;
- (e) “insured” means a person insured by a contract whether named or not and includes any person who is stated in a contract to be entitled to benefits payable under the insurance mentioned in section 629 whether described in the contract as an insured person or not.

5 The following is added after section 613:

Prohibition on refusal to issue contract, etc.

613.1(1) In this section, “adverse contractual action” means, with respect to basic coverage,

- (a) refusing to process an application for automobile insurance;
- (b) refusing to issue a contract;
- (c) refusing to renew a contract;
- (d) terminating a contract;
- (e) cancelling a contract;

- (f) refusing to provide any coverage or endorsement;
- (g) refusing to continue any coverage or endorsement;
- (h) any action respecting a contract, not referred to in clauses (a) to (g), that is prescribed or otherwise described by regulation as adverse contractual action.

(2) An insurer, insurance agent or insurance broker must not, directly or indirectly, take any adverse contractual action with respect to an insured or an applicant for a contract except for one or more of the following reasons:

- (a) the non-payment of a premium or any portion of a premium;
- (b) the failure of the insured or the applicant for a contract to inform the insurer or to keep the insurer informed, where requested to do so by the insurer, as to who is the principal driver of the automobile for which the insurance coverage is or is to be issued;
- (c) in the case of an insurer that is a provincial or extra-provincial company, the insurer is required to cease to undertake or to offer to undertake insurance pursuant to section 25(2);
- (d) in the case of an insurer that is a federally authorized company, the federal Superintendent of Financial Institutions has ordered or otherwise directed the insurer to cease carrying on business or insuring risks in Canada;
- (e) the insurer has given notice under section 661.2(3) that the insurer intends to withdraw from the business of automobile insurance;
- (f) where permitted by regulation, any reasons not referred to in clauses (a) to (e) that are prescribed or otherwise described by regulation.

(3) Where

- (a) a premium or any portion of a premium that is owing in respect of a contract is in arrears,
- (b) the insurer takes adverse contractual action by reason of those arrears not being paid, and
- (c) the person liable for those arrears applies to the insurer to renew or issue a contract or to any other insurer to issue a contract,

the insurer may refuse to renew or issue, as the case may be, a contract to that person until those arrears are paid to the insurer to which the arrears are owing.

(4) The Lieutenant Governor in Council may make regulations

- (a) permitting adverse contractual action to be taken other than under subsection (2)(a) to (e) and prescribing or otherwise describing any reasons not referred to in subsection (2)(a) to (e) under which adverse contractual action may be taken;
- (b) prescribing or otherwise describing any action, not referred to in subsection (1)(a) to (g), as adverse contractual action;
- (c) governing the taking of adverse contractual action;
- (d) governing the issuing or renewing of contracts;
- (e) governing any transitional matter concerning the application of this section in respect of matters dealt with under this section;
- (f) providing for any matter that the Lieutenant Governor in Council considers advisable for carrying out the purpose and intent of this section.

6 The following is added after section 626:

Reductions of automobile accident claim awards

626.1(1) In this section,

- (a) “award” means a judgment or settlement in respect of an accident claim;
- (b) “prescribed” means provided for in regulations made under subsection (8).

(2) To the extent that an award is for or is determined with reference to loss of earnings, the amount of the award must be reduced by

- (a) income tax, if the award is not subjected to income tax,
- (b) contributions by employees, and 50% of contributions by self-employed persons, under the *Canada Pension Plan* (Canada), and
- (c) premiums under the *Employment Insurance Act* (Canada) relating to the state of being employed,

that would be or would have been payable on or with reference to the lost earnings, both before and after the award, had the accident not occurred.

(3) The whole of or the portion of an award that is for or is calculated with reference to a head of damages to which any payment in any form specified in any clause of subsection (4) relates must be reduced by the aggregate of all payments, both before and after the award, and net of tax, contributions and premiums referred to in subsection (2)(a) to (c) paid or payable on those payments (so far as applicable), that

- (a) are received by or on behalf of the claimant as a result of or otherwise in respect of the accident,
- (b) are in any form specified in subsection (4)(a) to (h), and
- (c) relate to that head of damages.

(4) The forms of payment referred to in subsection (3) are

- (a) medical, dental, disability, rehabilitation, income continuation or replacement and hospitalization benefits paid on a no-fault basis and received by or on behalf of a resident of a jurisdiction other than Alberta under a contract of automobile insurance,

- (b) medical care and sickness and accident benefits comprising medical care or goods or services that are not provided under the *Alberta Health Care Insurance Act* or, where the claimant is a resident of another jurisdiction, the equivalent legislation of that jurisdiction, or that exceed the limits for that care or those goods or services under that Act or that equivalent legislation,
- (c) proceeds of a policy of insurance that falls within Subpart 6 of Part 5 or the legislation of another jurisdiction that is equivalent to that Subpart,
- (d) benefits under a prescribed income continuation or replacement plan or scheme,
- (e) benefits under an income replacement plan or scheme referred to in section 15.1,
- (f) disability pensions under the *Canada Pension Plan* (Canada) or under any equivalent legislation of a jurisdiction outside Canada,
- (g) compensation under legislation of another jurisdiction that is equivalent to the *Workers' Compensation Act* and its regulations, in respect of disability, medical, dental, rehabilitation or hospitalization expenses, and
- (h) any other prescribed payments, benefits or compensation under the laws of any jurisdiction, other than laws referred to in clauses (e), (f) and (g).

(5) The reference in subsection (3) to payments received is deemed to include circumstances where a legal obligation to make the payments or to provide related benefits referred to in subsection (4) to or on behalf of the claimant (netted, where applicable, as referred to in subsection (3)) has been established or acknowledged before the award.

(6) A person who makes or assumes liability for a payment referred to in subsection (3) is not subrogated to a right of recovery of the insured against another person in respect of that payment.

(7) Nothing in this section shall be construed as limiting a court's ability to take into account any premiums or other amounts paid by a claimant in respect of any benefits, policies, plans or compensation in any form specified in any clause of subsection (4).

(8) For the purposes of this section, the Lieutenant Governor in Council may make regulations

- (a) respecting any matter or thing that may be or is to be prescribed for the purposes of this section, and
- (b) defining, for the purposes of this section, any expression used in it and not defined in this Subpart.

(9) This section does not apply to any accident claim that arose in respect of an accident that occurred before the coming into force of this section.

7 Section 627 is amended by adding the following after subsection (5):

(6) Notwithstanding subsection (4), but subject to section 613.1, no insurer may refuse a request by an insured or an applicant for a contract to increase the limit to one of the following amounts, exclusive of interest and costs, against liability resulting from bodily injury to or the death of one or more persons and loss of or damage to property:

- (a) \$500 000;
- (b) \$1 000 000;
- (c) \$2 000 000.

8 Section 629 is amended

- (a) in subsection (2) by striking out “involving an automobile”;
- (b) by repealing subsections (7) and (8);

(c) in subsection (9) by adding the following after clause (c):

- (d) establishing or governing a system or process for the examination, assessment and treatment or rehabilitation of bodily injuries suffered by an insured as a result of an accident in respect of which benefits are payable under this section;
- (e) governing the payment of any fees, levies or other assessments in respect of a system or process established under clause (d), including, without limitation, regulations respecting
 - (i) the amount of the fees, levies or other assessments or the manner in which and by whom any of those amounts are to be determined, and
 - (ii) to whom and by whom the fees, levies or other assessments are to be paid;
- (f) providing for any matter that the Lieutenant Governor in Council considers advisable for carrying out the purpose and intent of this section.

9 The following is added after section 635:

Regulations re notice of legal representation

635.1 The Lieutenant Governor in Council may make regulations requiring a lawyer retained by a plaintiff in an action arising out of an accident to give notice of that fact to the defendant's insurer, including regulations respecting the time at which and the manner in which that notice must be given.

10 Section 636 is amended by adding the following after subsection (4):

- (5) The Lieutenant Governor in Council may make regulations
 - (a) authorizing the Court to make an order requiring an insurer to make a payment under this section to a claimant in advance of any judgment;

- (b) prescribing or otherwise describing the circumstances under which an order referred to in clause (a) may be made.

11 The following is added after section 637:

Regulations re disclosure of policy limits

637.1 The Lieutenant Governor in Council may make regulations respecting the disclosure of liability limits under a motor vehicle liability policy, including, without limitation, regulations respecting

- (a) the circumstances under which the disclosure is to be made;
- (b) to whom and by whom the disclosure is to be made;
- (c) the form and manner in which and the time at which the disclosure must be made.

12 Sections 640(1) and 642(1) are amended by striking out “involving an automobile”.

13 The following is added after section 650:

Minor Injuries

Minor injury

650.1(1) In this section, “minor injury” means an injury as defined or otherwise described by regulation as a minor injury.

(2) In an accident claim, the amount recoverable as damages for non-pecuniary loss of the plaintiff for a minor injury must be calculated or otherwise determined in accordance with the regulations.

(3) The Lieutenant Governor in Council may make regulations

- (a) defining minor injury or otherwise describing what constitutes a minor injury;

- (b) providing for the classification of or categories of minor injuries;
- (c) providing for the assessment of injuries, including, without limitation, regulations establishing or adopting guidelines, best practices or other methods for assessing whether an injury is or is not a minor injury;
- (d) governing damages, including the amounts of or limits on damages, for non-pecuniary loss for minor injuries;
- (e) governing deductible amounts or limits and the application of those amounts or limits in respect of damages for non-pecuniary loss for minor injuries;
- (f) providing for or otherwise setting out circumstances under which a minor injury to which this section would otherwise apply is exempt from the operation of this section;
- (g) governing the application of this section in respect of injuries arising out of an accident where
 - (i) it is unclear as to whether or not this section applies to those injuries, or
 - (ii) the injuries consist of a combination of minor injuries to which this section applies and injuries to which this section does not apply;
- (h) establishing and governing a system or process under which a person or a committee, panel or other body may review any injury to a person and give an opinion as to whether or not the injury is a minor injury;
 - (i) providing for the appointment or designation of persons or of members of committees, panels or other bodies for the purposes of a system or process established under clause (h);
 - (j) governing the payment of any fees, levies and other assessments in respect of a system or process established under clause (h), including, without limitation, regulations respecting

- (i) the amount of the fees, levies or other assessments or the manner in which and by whom any of those amounts are to be determined, and
 - (ii) by whom and to whom the fees, levies or other assessments are to be paid;
 - (k) governing any transitional matter concerning the application of this section in respect of matters dealt with under this section;
 - (l) providing for any matter that the Lieutenant Governor in Council considers advisable for carrying out the purpose and intent of this section.
- (4) This section does not apply to any accident claim that arose in respect of an accident that occurred before the coming into force of this section.

Structured Judgments

Regulations re structured judgments

650.2(1) The Lieutenant Governor in Council may make regulations

- (a) authorizing the Court to make an order directing that any award for damages in respect of an action for loss or damages from bodily injury or death arising from an accident must be paid periodically on the terms the Court considers appropriate;
- (b) prescribing or otherwise describing the circumstances under which an order referred to in clause (a) may be made.

14 Section 651(1) is amended by striking out “An” and substituting “Subject to section 626.1(6), an”.

15 The heading preceding section 652 and sections 652 to 660 are repealed and the following is substituted:

Automobile Insurance Rate Board

Definitions

652 In this section and sections 653 to 660.2,

- (a) “additional coverage” means automobile insurance that may be made available by an insurer that supplements basic coverage, including, without limitation, collision coverage;
- (b) “Board” means the Automobile Insurance Rate Board.

Rate Board established

653(1) The Automobile Insurance Rate Board is established consisting of

- (a) at least 3 but not more than 7 members appointed by the Lieutenant Governor in Council, and
 - (b) the Superintendent.
- (2)** The Superintendent is a non-voting member of the Board.
- (3)** The Lieutenant Governor in Council may
- (a) appoint one of the members of the Board, other than the Superintendent, as chair and another as vice-chair, and
 - (b) fix the remuneration and provide for the payment of expenses to the members who are not employees of the Government.
- (4)** The term of office of a member of the Board referred to in subsection (1)(a) must not exceed 3 years.
- (5)** A member of the Board referred to in subsection (1)(a) may be reappointed for 2 additional terms of office.
- (6)** Notwithstanding subsection (5), the chair of the Board is always eligible to be reappointed as chair.
- (7)** A person appointed as a member of the Board continues to hold office after the expiry of the member’s term until the

member is reappointed, the member's successor is appointed or 12 months has elapsed, whichever occurs first.

(8) Subject to the approval of the Lieutenant Governor in Council, the Board may from time to time appoint one or more persons having special technical or other knowledge to inquire into and report to the Board in respect of any matter before the Board or in respect of which the Board considers it necessary to have information for the proper carrying out of its duties and functions.

(9) A person appointed by the Board pursuant to subsection (8) must be paid the remuneration specified by the Lieutenant Governor in Council.

(10) A majority of the members of the Board constitutes a quorum for the purpose of exercising its powers and performing its duties and functions.

(11) An order, direction, approval or other instrument that the Board is permitted or required to make may be made on its behalf by the chair, the vice-chair or any other member of the Board.

(12) An order, direction, approval or other instrument purporting to be signed by the chair, the vice-chair or a member of the Board on behalf of the Board is admissible in evidence in any proceedings as proof, in the absence of evidence to the contrary,

(a) that the order, direction, approval or instrument is the act of the Board, and

(b) that the person signing it was authorized to do so

without proof of the appointment of the individual signing as a member of the Board, or the individual's designation as chair or vice-chair, as the case may be, or of the individual's signature.

(13) The Board may make rules governing its procedures.

(14) The *Regulations Act* does not apply to rules made under subsection (13).

(15) Every member of the Board has the power of a commissioner under the *Public Inquiries Act*.

(16) In accordance with the *Public Service Act*, there may be appointed the staff and other persons required by the Board.

(17) The Lieutenant Governor in Council may make regulations authorizing the Board to charge and collect from licensed insurers of automobiles fees, levies or other assessments for the Board's operations and for matters under its administration, including, without limitation, regulations respecting the amount of the fees, levies and other assessments and the manner in which and the times at which they must be paid.

Powers and duties of Board

654(1) In addition to the powers and duties imposed or conferred on the Board under this Act or the regulations, the Board must exercise and perform any other powers and duties assigned to it by the Minister or prescribed by the regulations.

(2) Notwithstanding anything in this Subpart, the Minister may, if the Minister considers it appropriate to do so, exercise any of the powers and perform any of the duties or functions of the Board under this Act.

(3) If there is an inconsistency or conflict between an action taken by the Board and an action taken by the Minister under subsection (2), the action taken by the Minister prevails.

Annual report

655(1) The Board must make and submit to the Minister an annual report on the operations of the Board.

(2) The Minister must lay the report before the Legislative Assembly if it is then sitting or, if it is not then sitting, within 15 days after the commencement of the next sitting.

Premiums for Basic Coverage

Premiums for basic coverage

656(1) The Board must, in accordance with the regulations, determine and set premiums for basic coverage annually, or for such shorter period as may be prescribed by the regulations.

(2) Notwithstanding subsection (1), the Lieutenant Governor in Council may determine and set premiums for basic coverage for any period the Lieutenant Governor in Council considers appropriate.

(3) The premiums for basic coverage must be set by the Board or the Lieutenant Governor in Council, as the case may be, before the beginning of the period for which the premiums are effective.

(4) The Lieutenant Governor in Council may make regulations

- (a) respecting the setting of premiums for basic coverage, including, without limitation, regulations
 - (i) establishing or providing for the manner of establishing criteria to be applied in setting the premiums;
 - (ii) governing the method of setting the premiums based on the criteria established under subclause (i);
- (b) respecting the refund or credit of any amounts paid for basic coverage under contracts made or renewed before, or in effect on, the coming into force of this section, including, without limitation, regulations respecting the contracts in respect of which a refund or credit is to be made, the amount of the refund or credit and the manner in which insurers must provide the refund or credit;
- (c) requiring insurers to provide reports and information to the Board, including, without limitation, regulations respecting the nature and contents of the reports or information to be provided, the form in which the reports or information is to be provided and the times at which the reports or information is to be provided;
- (d) respecting the use and confidentiality of the reports and information referred to in clause (c);
- (e) governing any transitional matter concerning the application of this section in respect of matters dealt with under this section, including, without limitation, regulations governing the application of this section in

respect of contracts in effect when this section comes into force;

- (f) providing for any other matter that the Lieutenant Governor in Council considers advisable for carrying out the purpose and intent of this section.

(5) Nothing in this section precludes an insurer from charging a premium for basic coverage that is less than the corresponding premium for basic coverage established by the Board or the Lieutenant Governor in Council, as the case may be.

Discounts and surcharges

657 The Lieutenant Governor in Council may make regulations respecting discounts and surcharges on premiums for basic coverage, including, without limitation, regulations

- (a) establishing or providing for the manner of establishing criteria to be applied in calculating the amount or level of discounts and surcharges;
- (b) governing the method of calculating the amount or level of discounts and surcharges based on the criteria established under clause (a);
- (c) governing any transitional matter concerning the application of this section in respect of matters dealt with under this section;
- (d) providing for any other matter that the Lieutenant Governor in Council considers advisable for carrying out the purpose and intent of this section.

Procedures

658(1) The Superintendent may establish written procedures to be followed by insurers in determining the amount payable for basic coverage by an insured or an applicant for a contract based on

- (a) the relevant amount of the premium for basic coverage determined pursuant to section 656, and
- (b) the amount of any discount or surcharge on that premium determined pursuant to section 657.

(2) The *Regulations Act* does not apply to written procedures established under subsection (1).

Prohibition

659(1) No insurer may charge or collect from an insured or an applicant for a contract an amount for basic coverage that is greater than the relevant premium determined pursuant to section 656 less any discount or plus any surcharge on that premium determined pursuant to section 657.

(2) Subsection (1) does not apply to a contract made or renewed before the coming into force of this section.

**Premiums for
Additional Coverage**

Premiums for additional coverage

660(1) Every licensed insurer of automobiles must, in accordance with the regulations, file with the Board the schedule of premiums it proposes to charge for additional coverage.

(2) No insurer may charge the proposed premiums for additional coverage unless the premiums have first been filed with the Board.

(3) This section applies in respect of proposed premiums to be charged for additional coverage in respect of a contract made or renewed after the coming into force of this section.

Review of premiums for additional coverage

660.1 The Board must, after an insurer has filed its schedule of premiums for additional coverage with the Board under section 660, review those premiums and if it is of the opinion that any one or more of the premiums are not based on appropriate actuarial principles, the Board may report the matter to the Minister.

Regulations

660.2 The Lieutenant Governor in Council may make regulations

(a) respecting annual reports under section 655;

- (b) respecting the filing with the Board of a schedule of premiums for additional coverage under section 660;
- (c) respecting the period of time during which the Board must review a schedule of premiums for additional coverage filed with the Board under section 660;
- (d) requiring an insurer to give notice to the Registrar of Motor Vehicle Services whenever a contract is terminated, cancelled or not renewed, including regulations respecting the form and manner in which the notice must be given;
- (e) governing or otherwise respecting any matter related to premiums, charges, surcharges, discounts or other incentives related to automobile insurance;
- (f) respecting any matter that is to be prescribed under this Subpart;
- (g) defining for the purposes of this Subpart and the regulations made under this Subpart any term or expression used in this Subpart that is not defined in this Act.

16 Section 661 is amended by repealing subsections (6) and (7) and substituting the following:

- (6) The Lieutenant Governor in Council may make regulations
 - (a) governing the operation of a Government approved industry plan;
 - (b) determining the amounts to be paid by each insurer for the operation of a Government approved industry plan;
 - (c) providing for any other matter that the Lieutenant Governor in Council considers advisable for carrying out the purpose and intent of this section.

17 The following is added after section 661:

Premium freeze

661.1(1) In this section,

- (a) “insured” includes an applicant for a contract;
- (b) “insurer” includes a servicing carrier under a Government approved industry plan referred to in section 661;
- (c) “order” includes any directions given by the Superintendent pursuant to subsection (5) in respect of an order made under subsection (2);
- (d) “premium” means a premium for automobile insurance and includes any rates, fees, surcharges or other amounts defined or otherwise described as a premium in an order made under subsection (2);
- (e) “rating program” means the rules, criteria, policies or guidelines of any nature used or adopted by an insurer to determine the premiums to be charged to an insured for automobile insurance.

(2) The Lieutenant Governor in Council may by order, effective on the date or period provided for in the order, freeze premiums prescribed or otherwise described in the order at the levels prescribed or otherwise described in the order.

(3) Without limiting the generality of subsection (2), an order made under subsection (2) may

- (a) be made retroactive to the extent set out or otherwise provided for in the order;
- (b) exempt in whole or in part a contract or class of contracts from the application of the order;
- (c) exempt in whole or in part an automobile or class of automobiles from the application of the order;
- (d) exempt in whole or in part an insurer or class of insurers from the application of the order;
- (e) prescribe or otherwise describe the premiums and the levels of premiums to which the order applies;

- (f) prohibit an insurer from charging premiums in excess of the premiums provided for under the order;
 - (g) contain provisions specifying the manner or method or the procedures to be used by an insurer to determine premiums for contracts made or renewed after the effective date of the order, including provisions suspending or modifying the insurer's rating program or any part of the insurer's rating program;
 - (h) suspend or modify the application or operation of any one or more provisions of this Act during any period that the order is in effect;
 - (i) suspend or modify any decision of the Alberta Automobile Insurance Board;
 - (j) be specific or general in its application;
 - (k) define or otherwise describe rates, fees, surcharges or other amounts as premiums for the purpose of the order;
 - (l) contain provisions
 - (i) requiring an insurer to reimburse or otherwise provide a refund or credit to an insured for any part of any premiums paid by the insured as a result of the insurer's non-compliance with the order, and
 - (ii) specifying the manner in which and the time at which any reimbursement, refund or credit of those premiums must be made;
 - (m) define any word or term used in this section that is not otherwise defined in this section;
 - (n) include any other provisions that the Lieutenant Governor in Council considers necessary or advisable for carrying out the purpose and intent of this section.
- (4)** An order made under subsection (2)
- (a) is in effect for any period stated in the order, and

(b) may be renewed for any further period or periods the Lieutenant Governor in Council considers appropriate.

(5) The Superintendent may give directions to an insurer with respect to an order made under subsection (2), including, without limitation, directions with respect to

- (a) determining premiums during the period for which the order is in effect, and
- (b) the application of the insurer's rating program in respect of premiums to which the order applies,

for the purposes of ensuring that the order is carried out within the spirit and intent of this section and the order.

(6) Section 789 applies to an order made under subsection (2).

(7) The *Regulations Act* does not apply to an order made under subsection (2).

18 The following is added after section 661.1:

Withdrawal from business

661.2(1) For the purposes of this section, an insurer is withdrawing from the business of automobile insurance if the insurer does anything that results or is likely to result in a significant reduction in the amount of premiums written by the insurer for automobile insurance in any part of Alberta, including any of the following actions that have or are likely to have that result:

- (a) refusing to process applications for automobile insurance;
- (b) refusing to issue a contract;
- (c) refusing to renew a contract;
- (d) terminating a contract;
- (e) cancelling a contract;

- (f) refusing to provide any coverage or endorsement in respect of a contract;
 - (g) refusing to continue any coverage or endorsement in respect of a contract;
 - (h) taking actions that directly or indirectly result in termination of contracts between the insurer and the insurance agents and insurance brokers who solicit or negotiate contracts on behalf of the insurer;
 - (i) reducing the ability of insurance agents or insurance brokers to solicit or negotiate contracts on behalf of the insurer;
 - (j) reducing the insurer's ability to act as a servicing carrier or ceasing to act as a servicing carrier under a Government approved industry plan referred to in section 661;
 - (k) engaging in any activity or failing to act as prescribed or otherwise described in the regulations.
- (2) An insurer must not withdraw from the business of automobile insurance except in accordance with this section.
- (3) An insurer that intends to withdraw from the business of automobile insurance must file with the Superintendent a notice in the form prescribed by the Superintendent.
- (4) The notice must specify the date that the insurer intends to withdraw from the business of automobile insurance and must be filed at least 180 days before that date.
- (5) The Superintendent may require the insurer to provide the information, material and evidence that the Superintendent considers necessary in addition to the information, material and evidence required to be provided in the notice.
- (6) The insurer may withdraw from the business of automobile insurance on or after the date specified in the notice under subsection (4).
- (7) Notwithstanding subsection (6), the Superintendent may

- (a) authorize the insurer to withdraw from the business of automobile insurance before the date specified in the notice under subsection (4), or
 - (b) prohibit the insurer from withdrawing from the business of automobile insurance until a date specified by the Superintendent that is not later than 90 days after the date specified in the notice under subsection (4).
- (8) The Lieutenant Governor in Council may make regulations prescribing or otherwise describing any activity or failure to act for the purposes of subsection (1)(k).
- (9) An insurer who fails to comply with a requirement of this section is guilty of an offence and liable to a fine of not more than \$100 000.

Methods of Resolving Disputes

Dispute resolution

661.3(1) In this section, “complaint” means any complaint or issue that an insured or an applicant for a contract has with an insurer, an insurance agent or an insurance broker with respect to

- (a) premiums,
- (b) the basis on which a premium was determined,
- (c) the availability of insurance,
- (d) the taking of adverse contractual action referred to in section 613.1,
- (e) fault as determined by an insurer in relation to a claim, or
- (f) any matter not referred to in clauses (a) to (e) prescribed by regulation,

but does not include, in respect of an accident, any matter concerning the determination of liability or the amount of damages where an action has been commenced or likely to be commenced in respect of that accident.

(2) The Lieutenant Governor in Council may make regulations providing for one or more dispute resolution systems or processes by means of which complaints may be resolved or otherwise dealt with and, without restricting the generality of the foregoing, may make regulations

- (a) prescribing, for the purposes of subsection (1)(f), any other matter for which a dispute resolution system or process may be used;
- (b) governing the procedure to be followed or otherwise used in making and resolving or attempting to resolve a complaint;
- (c) governing the mechanisms to be used under the dispute resolution system or process, including
 - (i) the appointment and use of committees or other bodies to deal with complaints;
 - (ii) the use of mediation and the appointment of mediators;
 - (iii) the use of arbitration and the appointment of arbitrators;
- (d) governing the duties, functions and powers of the Superintendent, if any, in respect of a dispute resolution system or process;
- (e) governing the remedies available under a dispute resolution system or process;
- (f) providing for any matter that the Lieutenant Governor in Council considers advisable for carrying out the purpose and intent of this section.

Previous Law and Unforeseen and Transitional Matters

Provision of insurance pursuant to previous law

661.4(1) In this section and sections 661.5 and 661.6,

- (a) “amended Act” means the previous Act as amended by the amending Act;
- (b) “amending Act” means the *Insurance Amendment Act, 2003*;
- (c) “previous Act” means the *Insurance Act* as it read immediately before being amended by the amending Act.

(2) The Lieutenant Governor in Council may make regulations governing the application of the amended Act or the previous Act with respect to any contract, insurer, insurance agent, insurance broker, adjuster, insured, applicant for a contract or automobile or any one or more classes of any of them or for the purposes of providing a contract or determining a premium in a manner not provided for under the amended Act and, without restricting the generality of the foregoing, may make regulations

- (a) providing that the previous Act will continue to apply instead of the amended Act;
- (b) providing that only certain provisions of the amended Act will apply;
- (c) providing that only certain provisions of the previous Act will continue to apply;
- (d) providing that where the previous Act or any of its provisions continue to apply, the Automobile Insurance Rate Board is to carry out the duties and functions and exercise the powers of the Alberta Automobile Insurance Board in respect of the previous Act, subject to any necessary modifications;
- (e) modifying, where regulations are made under clauses (a) to (d), any provision of the amended Act or the previous Act, as the case may be, to the extent that the Lieutenant Governor in Council considers necessary in order to carry out the purpose and intent of this section;

- (f) providing for any other matter that the Lieutenant Governor in Council considers advisable for carrying out the purpose and intent of this section.

Regulations re unforeseen matters

661.5(1) The Lieutenant Governor in Council may make regulations in respect of matters coming under the amending Act or the amended Act that the Minister, after consulting with the Superintendent, considers to be unforeseen, that are not provided for or that are insufficiently provided for under the amending Act or the amended Act.

(2) A regulation made under subsection (1) is repealed on the earliest of the following:

- (a) the coming into force of an amendment to a statute that provides for the matter dealt with in the regulation made under subsection (1);
- (b) the coming into force of a regulation that repeals the regulation made under subsection (1);
- (c) the expiration of 3 years from the day that the regulation made under subsection (1) comes into force.

(3) The repeal of a regulation under subsection (2)(b) or (c) does not affect anything done, incurred or acquired under the authority of that regulation before the repeal of that regulation.

(4) A regulation must not be made under subsection (1) after the expiration of 3 years from the day that this section comes into force, but any regulation made under subsection (1) that is in force on the expiration of that 3-year period remains in force until it is repealed under subsection (2).

(5) A regulation must not be made under subsection (1) altering the provisions of subsection (2) or extending the 3-year period provided for in subsection (4).

Transitional matters

661.6 The Minister may make regulations

- (a) respecting the transition of any matter from the previous Act to the amended Act;

- (b) to deal with any difficulty or impossibility resulting from the transition from the previous Act to the amended Act.

19 Section 780 is amended

- (a) in clause (a)(i) by adding “25(2),” after “18,”;
- (b) by repealing clause (e) and substituting the following:

- (e) in Part 5,
 - (i) in Subpart 1, sections 525(1) and 535(2), (4) and (5);
 - (ii) in Subpart 2, sections 538(1), (2) and (3), 539 and 540(2) and (3);
 - (iii) in Subpart 5, sections 610(1) and (8), 613.1(2), 627(6), 659 and 660(1) and (2);
 - (iv) in Subpart 6, section 698;

20 Section 781 is amended

- (a) in clause (a) by adding “, 661.1” after “507”;
- (b) by adding the following after clause (c):
 - (c.1) contravenes a written procedure established by the Superintendent under section 658,

21 Section 789(1) is amended by adding “or has contravened a written procedure established by the Superintendent under section 658 or an order under section 661.1(2)” **after** “regulations”.

22 The *Conflicts of Interest Act* is amended in Part 3 of the Schedule by striking out “Alberta Automobile Insurance Board” **and substituting** “Alberta Insurance Rate Board”.

23 The *Hospitals Act* is amended by adding the following after section 61:

Application of s626.1, Insurance Act

61.1 Nothing in section 626.1 of the *Insurance Act* affects the application of this Part.

24 The *Motor Vehicle Accident Claims Act* is amended in section 17 by adding the following after subsection (11):

(12) Nothing in section 626.1 of the *Insurance Act* affects the Administrator's right of subrogation under subsection (6).

25 The *Workers' Compensation Act* is amended in section 1.1 by adding "and, to avoid any doubt, nothing in section 626.1 of the *Insurance Act* affects the application of this Act" after "this Act".

26 This Act, except sections 17 and 20(a), comes into force on Proclamation.

Explanatory Notes

1 Amends chapter I-3 of the Revised Statutes of Alberta 2000.

2 Section 25 presently reads:

25 Before issuing a licence to or renewing a licence of a provincial or extra-provincial company, the Minister must be satisfied that

(a) *the amount of the company's base capital is at least,*

(i) *for life companies, \$5 000 000 or any greater amount specified by the regulations, and*

(ii) *for property and casualty companies,
\$3 000 000 or any greater amount
specified by the regulations,*

and

(b) *the company's base capital is adequate,
taking into account the nature of the business
that it proposes to engage in, the expected
volume of its business and any restrictions on
its business.*

3 Additional regulation-making power.

4 Section 608 presently reads:

608 In this Subpart,

(a) *"contract" means a contract of automobile
insurance;*

(b) *"insured" means a person insured by a
contract whether named or not and includes
any person who is stated in a contract to be
entitled to benefits payable under the
insurance mentioned in section 629 whether
described in the contract as an insured
person or not.*

5 Prohibition against refusal to issue a contract.

6 Reductions from automobile accident claim
awards.

7 Additional coverage for third party liability.

8 Section 629 presently reads in part:

(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.

(7) Subject to section 656, the rates to be prescribed for the benefits must be the same within each class of automobile insured by an insurer in Alberta.

(8) The rates for the benefits must 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

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

9 Regulations re notice of legal representation.

10 Payment in advance of judgment.

11 Regulations re disclosure of policy limits.

12 Sections 640(1) and 642(1) presently read:

640(1) If an insurer provides in a contract insurance against loss resulting from bodily injury to

or the death of a person insured arising out of an accident involving an automobile when

- (a) there is legal liability of another person for the injury or death, and*
- (b) the other person has no insurance against the liability for the injury or death or cannot be identified,*

that insurance applies only in respect of

- (c) a person who sustains bodily injury or death while driving, being carried in or on or entering or getting on to or alighting from the described automobile in respect of which insurance against liability arising out of bodily injury to or the death of a person caused by an automobile or the use or operation of an automobile is provided under the contract, and*
- (d) the insured named in the contract and the spouse or adult interdependent partner of the insured named in the contract and any dependent relative residing in the same dwelling place as the insured named in the contract who sustains bodily injury or death while driving, being carried in or on or entering or getting on to or alighting from or as a result of being struck by any other automobile that is defined in the contract for the purposes of that insurance.*

642(1) When in a contract an insurer provides accident insurance benefits in respect of the death of or injury to an insured arising out of an accident involving an automobile, the insurance applies only in respect of

- (a) any person who sustains bodily injury or death while driving or being carried in or on or entering or getting on to or alighting from or, if not the occupant of another automobile, as a result of being struck by an automobile owned by the insured named in the contract*

in respect of which insurance against liability arising out of bodily injury to or the death of a person caused by an automobile or the use or operation of an automobile is provided under the contract, and

- (b) *the insured named in the contract and the spouse or adult interdependent partner of the insured named in the contract and any dependent relative residing in the same dwelling place as the insured named in the contract who sustains bodily injury or death while driving or being carried in or on or entering or getting on to or alighting from or as a result of being struck by any other automobile that is defined in the policy for the purposes of the insurance.*

13 Provisions added respecting minor injuries and structured judgments.

14 Section 651(1) presently reads:

651(1) An insurer that makes any payment or assumes liability for making any payment under a contract is subrogated to all rights of recovery of the insured against any person and may bring action in the name of the insured to enforce those rights.

15 The heading preceding section 652 and sections 652 to 660 presently read as follows:

Automobile Insurance Board

652 In sections 653 to 661,

- (a) *“Board” means the Alberta Automobile Insurance Board referred to in section 653(1);*
- (b) *“minimum insurance” means the insurance referred to in sections 627(1) and 629;*

- (c) *“rates” means the price charged for a motor vehicle liability policy or any coverage under that policy.*

653(1) The Lieutenant Governor in Council may establish a board to be known as the “Alberta Automobile Insurance Board” consisting of the members that the Lieutenant Governor in Council appoints.

(2) The Lieutenant Governor in Council may

- (a) designate one of the members of the Board as chair and another as vice-chair, and*
- (b) fix the remuneration and provide for the payment of expenses to be paid to the members who are not employees of the Government.*

(3) In accordance with the Public Service Act, there may be appointed the staff and other persons required by the Board.

(4) Subject to the approval of the Lieutenant Governor in Council, the Board may from time to time appoint one or more experts or persons having special technical or other knowledge to inquire into and report to the Board in respect of any matter before the Board or in respect of which the Board considers it necessary to have information for the proper carrying out of its duties.

(5) A person appointed by the Board pursuant to subsection (4) must be paid the remuneration specified by the Lieutenant Governor in Council.

(6) A majority of members constitutes a quorum of the Board for the purpose of exercising its powers and performing its duties.

(7) An order, direction, approval or other instrument that the Board is permitted or required to make may be made on its behalf by the chair, the vice-chair or any other member of the Board.

(8) An order, direction, approval or other instrument purporting to be signed by the chair, the vice-chair or a member of the Board on behalf of the Board is admissible in evidence in any proceedings as proof, in the absence of evidence to the contrary,

- (a) that the order, direction, approval or instrument is the act of the Board or of a quorum of the Board, and*
- (b) that the person signing it was authorized to do so*

without proof of the appointment of the individual signing as a member of the Board, or the individual's designation as chair or vice-chair, as the case may be, or of the individual's signature.

(9) The Board may make rules governing its procedures.

(10) The chair, vice-chair and every other member of the Board has the power of a commissioner under the Public Inquiries Act.

654 The Board has the power

- (a) to investigate any matter it thinks fit respecting automobile insurance in Alberta, including rates, benefits and availability of automobile insurance, and*
- (b) to prohibit*
 - (i) an insurer from charging any rate for the minimum insurance above a rate filed pursuant to section 655,*
 - (ii) any change in class of an automobile from the classification of that automobile filed pursuant to section 655, or*
 - (iii) any change that would have the effect of increasing a rate for the minimum insurance for any insured or class of insured or that would have the effect of*

changing an automobile from one class to another,

unless the increase or change has first been approved by the Board under section 656(4) or (5).

655 Every licensed insurer of automobiles must file with the Board the full schedule of rates it intends to apply to every motor vehicle liability insurance policy to be issued by it in Alberta showing separately

- (a) the number and types of classes of automobiles proposed to be insured by the insurer in respect of which the minimum insurance applies, and*
- (b) the rates proposed to be charged for the minimum insurance with respect to each class of automobile.*

656(1) No insurer may

- (a) charge the proposed rates filed under section 655 or any other rate for the minimum insurance, or*
- (b) change an automobile from one class to another or add to or in any manner change the number or type of classes of automobiles filed with the Board,*

unless

- (c) the Board has approved*
 - (i) the rates,*
 - (ii) the classification of automobiles, and*
 - (iii) the rates attaching to each class of automobile,*

or

(d) the rates, the classification of automobiles and the rates attaching to each class of automobile have been filed with the Board for 60 days and the Board has neither approved nor disapproved the filing or any part of the filing.

(2) When an insurer receives an approval or is permitted to proceed pursuant to subsection (1), the insurer must not

(a) increase its rates with respect to the minimum insurance either generally or with respect to a particular class of automobile,

(b) change the class of any automobile with respect to the minimum insurance, or

(c) make any other change that would have the effect of increasing any rate for the minimum insurance or changing any class of any automobile with respect to the minimum insurance,

without first applying to the Board and receiving its approval pursuant to subsection (4) or (5).

(3) Where the Board is not satisfied that an insurer has filed all the matters referred to in this section, or requires additional details or information, it may, by order directed to the insurer, require the additional information and details.

(4) If an insurer wishes

(a) to increase any rate for the minimum insurance,

(b) to change the class of any automobile or the number or types of classes of automobile,

(c) to change any rate attaching to any particular class of automobile, or

(d) to make any other change that would have the effect of increasing any rate for the minimum

insurance or any change that would have the effect of changing the number or type of class of automobile with respect to the minimum insurance,

it may apply to the Board for approval of the increase, change of class or classification or the number or type of classes of automobile or any other change, and the Board in its discretion by order may

- (e) approve the application or any part of the application, or*
- (f) disapprove the application or any part of the application.*

(5) When an insurer makes an application to the Board pursuant to subsection (4) and the application has not been approved or disapproved during a period of 60 days from the date the application is filed, the application is deemed to have been approved and the increase in rates, change of class or classification of automobile or the type or number of classes of automobile or any other change applied for pursuant to subsection (4) may be made by the insurer on expiration of the 60-day period.

(6) When an application by an insurer has been approved pursuant to this section, the Board may at any time after the approval investigate

- (a) the rates of the insurer for the minimum insurance,*
- (b) the division into classes of automobile and the classification of automobiles and the number and type of classes of automobile with respect to the minimum insurance, or*
- (c) the rates for the minimum insurance attaching to any particular class of automobile,*

and, despite any prior approval, may order the insurer to reduce or change its rates, to change the classification of any automobile or the class or

number or type of automobile or make any other change with respect to the minimum insurance in the manner directed by the Board.

657 An insurer that

- (a) fails to file its rates pursuant to section 655,*
- (b) charges the proposed rate prior to its approval in contravention of section 656(1),*
- (c) increases the rate payable for the minimum insurance in contravention of section 656(2),*
- (d) adds to or in any manner changes the class of automobile, the classification of an automobile or the number or type of classes of automobile in contravention of section 656(2),*
- (e) makes any change in a rate or class or classification of automobile without approval pursuant to section 656(4) and (5), or*
- (f) in any manner fails to comply with an order or direction of the Board,*

is guilty of an offence.

658(1) The Board must make and submit to the Minister an annual report on the operation of the Board.

(2) The Minister must lay the report before the Legislative Assembly if it is then in session or if it is not, within 15 days after the opening of the next following session.

659(1) Except as provided in this section,

- (a) every decision, order, approval, direction or proceeding of the Board is final, and*
- (b) no decision, order, approval, direction or proceeding of the Board may be questioned or reviewed, restrained or removed by*

prohibition, injunction, certiorari or any other process or proceeding in any court.

(2) On a question of jurisdiction or on a question of law, an appeal lies from the Board to the Court of Appeal.

(3) Leave to appeal may be obtained from a judge of the Court of Appeal if

(a) an application is made within one month after the making of the decision, order, approval, direction or proceeding sought to be appealed from, or within any further time that the judge under special circumstances allows, and

(b) notice of the application is given to the parties and to the Board.

(4) The costs of the application are in the discretion of the judge.

660(1) Nothing in section 654, 655 or 656 prevents an insurer from charging a reduced rate for the minimum insurance

(a) when a person owns 2 or more automobiles classified for the minimum insurance under the same or a different class, or

(b) when a person owns 2 or more automobiles under 2 or more policies with the same insurer.

(2) Despite subsection (1), when an insurer charges a reduced rate for the minimum insurance, the insurer must not increase the rate unless the increase is approved under section 656(4) or (5).

16 Section 661 presently reads in part:

(6) All rates charged for automobile insurance under a plan are subject to the approval of the

Board, and, except for section 656(1)(d), sections 655, 656, 657 and 659 apply, with all necessary modifications, to those rates.

(7) Nothing in this section relieves an insurer from ensuring that the provisions of this Subpart relating to filing and the matters required by sections 655 and 656 are complied with.

17 Premium freeze.

18 Provision of insurance under previous law and providing for unforeseen and transitional matters.

19 Section 780 presently reads in part:

780 A person who contravenes any of the following provisions is guilty of an offence:

- (a) in Part 1,*

 - (i) in Subpart 1, sections 18, 31(1), 36, 39(1) and (5), 40, 41, 43(1), (2) and (4), 44(1), 45, 46(1), 47(1), 49, 50 and 56;*
 - (ii) in Subpart 2, sections 68(2), 71, 72, 73, 74(1) and 75;*
 - (iii) in Subpart 3, sections 79, 88, 91(1), 94(1) and (5), 95, 96, 98, 99, 100(1), 102, 103 and 104;*

- (e) in Part 5, Subpart 2, sections 525(1), 535, 538(1), (2) and (3), 539, 540(2) and (3), 610(1) and (8) and 698;*

20 Section 781 presently reads:

781 A person who

- (a) *contravenes an order or direction made under section 21(4), 327(2), 423, 480.1, 507, 764, 766 or 788,*
- (b) *contravenes a regulation specified by the Lieutenant Governor in Council under section 790,*
- (c) *contravenes a written undertaking given under this Act,*
- (d) *fails to report to the Minister or Superintendent as required by this Act,*
- (e) *being a licensed insurer, contravenes any term or condition to which a licence is subject, or*
- (f) *being a provincial company, contravenes any term or condition to which its instrument of incorporation is subject*

is guilty of an offence.

21 Section 789(1) presently reads:

789(1) Where the Minister is of the opinion that a person has contravened a prescribed provision of this Act or the regulations, the Minister may by notice in writing given to that person require that person to pay to the Government an administrative penalty by a date specified in the notice in the amount set out in the notice for each day or part of a day the contravention occurs or continues.

22 Amends chapter C-23 of the Revised Statutes of Alberta 2000.

23 Amends chapter H-12 of the Revised Statutes of Alberta 2000.

24 Amends chapter M-22 of the Revised Statutes of Alberta 2000.

25 Amends chapter W-15 of the Revised Statutes of Alberta 2000.

26 Coming into force.