

Bill 34
Mr. Oberle

BILL 34

2005

INSURANCE AMENDMENT ACT, 2005

(Assented to , 2005)

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

Amends RSA 2000 c1-3

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

2 Section 1 is amended by adding the following after clause (s):

- (s.1) “extra-provincial Crown insurer” means an insurer that
- (i) is formed by or under the laws of another province or territory,
 - (ii) has an exclusive right to perform an insurance activity in that province or territory, and
 - (iii) is beneficially owned or controlled by Her Majesty in right of that province or territory;

3 Section 15 is repealed and the following is substituted:

Benefit plans for medical care, accident and sickness benefits

15(1) This Act, except section 626.1, does not apply to a prescribed entity to the extent of its provision to participants of prescribed benefits relating to medical care, accident and sickness benefits.

(2) For the purposes of this section and section 15.1, “participant” includes a beneficiary or dependant of a participant.

4 Section 15.1 is amended

- (a) in subsections (2), (3)(a) and (b)(ii), (iii) and (v) and (4) by striking out “employees” and substituting “participants”;
- (b) in subsection (4) by striking out “net income or retained earnings” and substituting “net income, retained earnings or other financial resources”.

5 The following is added after section 16:

Crown Immunity

Crown immunity

16.1(1) In this section,

- (a) “Crown” means the Crown in right of Alberta and includes a Minister of the Crown and agents and employees of the Crown;
- (b) “reform amendments” means the amendments made to this Act by the *Insurance Amendment Act, 2003 (No. 2)* and the *Insurance Amendment Act, 2005*, and any regulations, orders in council, ministerial orders or board orders made pursuant to or by virtue of those amendments.

(2) No liability attaches to the Crown for any loss or damages that have arisen or may arise in respect of the reform amendments.

(3) All existing and future causes of action in law or in equity against the Crown in respect of the reform amendments, including, without limitation, Alberta Court of Queen’s Bench action number 0403-14323 and the claims made in that action, are extinguished without costs.

(4) Nothing in this section acknowledges, admits, validates or recognizes a cause of action referred to in subsection (3).

6 Section 19(1) is amended by adding the following after clause (b):

- (b.1) an extra-provincial Crown insurer or an affiliate of an extra-provincial Crown insurer;

7 Section 22 is repealed.

8 Section 32(1) is amended by adding “or at any time during the term of a licence,” after “renewing a licence.”

9 Section 60 is amended by adding the following after clause (b):

- (c) respecting the issuance of a licence to an extra-provincial Crown insurer or an affiliate of an extra-provincial Crown insurer including, without limitation, regulations suspending or modifying the application or operation of any one or more provisions of this Act in respect of the extra-provincial Crown insurer or the affiliate, as the case may be.

10 Section 82(1) is amended by striking out “motor vehicle liability policy” and substituting “standard owner’s policy referred to in section 610(6) or a standard garage policy”.

11 Section 511(1) is amended by adding the following after clause (h):

- (h.1) respecting the receiving, handling and resolution of complaints, other than complaints referred to in section 661.3, by persons against insurers, including, without limitation, regulations
 - (i) governing the procedures to be followed or otherwise used by insurers in receiving complaints, including procedures for acknowledging receipt of complaints;

- (ii) governing the procedures to be followed or otherwise used by insurers in handling complaints, including establishing a system of recording complaints;
- (iii) governing the procedures to be followed or otherwise used by insurers in resolving complaints, including the remedies available to resolve complaints;
- (iv) requiring insurers to appoint an officer in charge of the insurer's complaint procedures and prescribing the functions and duties of that officer;
- (v) requiring insurers to file annual reports with the Superintendent in respect of complaints received by insurers, including the number and nature of the complaints received according to categories prescribed in the regulations;
- (vi) governing the duties, functions and powers of the Superintendent, if any, in respect of the receiving, handling and resolution of complaints;

12 Section 613.1 is amended

- (a) in subsection (1) by striking out “, with respect to basic coverage,”;**
- (b) by adding the following after subsection (1):**
 - (1.1)** This section applies only to adverse contractual action taken in respect of basic coverage on private passenger vehicles.
- (c) in subsection (2) by adding the following after clause (c):**
 - (c.1) the insurer's licence is suspended or cancelled under section 54, 55, 819 or 819.1;

13 Section 626.1(4)(b) is amended by striking out “medical care and sickness and accident benefits” and substituting “medical care, accident and sickness benefits”.

14 Section 653(2)(b) is amended by adding the following after subclause (iii):

- (iii.1) a director or officer of an extra-provincial Crown insurer or of an affiliate of an extra-provincial Crown insurer,

15 Section 656(4)(b) is amended by adding “or after” after “before”.

16 Section 660.2 is amended by adding the following after clause (e):

- (e.1) respecting the refund or credit of any amounts paid for additional coverage under contracts made or renewed before or after, 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;

17 The following is added after section 792:

Guidelines and interpretation bulletins

792.1 The Superintendent may issue guidelines and interpretation bulletins respecting the interpretation or application of this Act or any one or more regulations under this Act.

18 The following is added after section 819:

General Insurance OmbudService

819.1(1) Every insurer, while licensed to undertake automobile insurance or any other prescribed class of insurance, is a member of the General Insurance OmbudService incorporated under the *Canada Corporations Act* (Canada) or any other entity designated by the Minister in substitution for the General Insurance OmbudService.

(2) Every member of the General Insurance OmbudService is bound by the bylaws and memorandum of operation of the General Insurance OmbudService.

(3) A member of the General Insurance OmbudService must pay to it all assessments and levies made against the member by the General Insurance OmbudService.

(4) If a member fails to pay an assessment or levy within 30 days after the mailing of the notice of the assessment or levy to the member,

- (a) the General Insurance OmbudService may claim the amount of the assessment or levy, with interest, as a debt due from the member, and

(b) the Minister may suspend the member's licence subject to any terms or conditions the Minister considers appropriate or cancel the member's licence.

(5) The debt due under subsection (4)(a) does not cease to be due on the termination of the member's membership.

(6) Before suspending or cancelling a member's licence under subsection (4)(b), the Minister must notify the insurer of the proposed suspension or cancellation and provide the insurer with an opportunity to make representations to the Minister.

(7) When an insurer's licence is cancelled under subsection (4)(b), the insurer must cease to carry on business in Alberta, except so far as is necessary for the winding-up of its business in Alberta.

(8) When an insurer's licence is suspended under subsection (4)(b), the insurer must cease to carry on business in Alberta in accordance with the terms and conditions of the suspension.

(9) If, under subsection (1), the Minister designates another entity in substitution for the General Insurance OmbudService, every insurer, while licensed to undertake automobile insurance or any other prescribed class of insurance, is a member of that entity and is not by virtue of this section a member of the General Insurance OmbudService, and all references to the General Insurance OmbudService in subsections (2) to (4) shall be read as references to that entity.

19 The following provisions are amended by striking out "Provincial Treasurer" and substituting "Minister of Finance":

section 61(1)(b)(ii);
section 80(1)(d)(ii);
section 498(n).

Explanatory Notes

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

2 Definition of extra-provincial Crown insurer.

3 Section 15 presently reads:

15 This Act does not apply to a prescribed entity to the extent of its provision to employees of prescribed benefits relating to medical care, sickness and accident benefits.

4 Section 15.1 presently reads:

15.1(1) In this section, “non-accountable entities” means entities that are not accountable organizations within the meaning of section 16 of the Government Accountability Act.

(2) Subject to any regulations made under subsection (3), this Act does not apply to an entity to the extent of its provision to its employees of prescribed benefits whose subject-matter is income replacement due to disability, sickness or disease, provided that no death benefit is payable.

(3) The Lieutenant Governor in Council may make regulations

(a) applying this Act to prescribed classes of non-accountable entities in respect of their provision to their employees of benefits referred to in subsection (2), and

(b) respecting such provision of those benefits by those classes, and in particular, in relation to each such class,

(i) the nature and sufficiency of its financial resources as a source of continuing

financial support for the financial obligations implicit in providing the benefits,

- (ii) the availability of financial statements, prepared comparably to those referred to in section 219(1), to employees,*
- (iii) the degree of segregation of any assets relating to the provision of the benefits, or offer of the benefits, to employees from the assets of the entity,*
- (iv) the adequacy of any capital or reserves maintained by the entity to support the provision or offer of the benefits, and*
- (v) the extent to which matters referred to in this subsection are to be disclosed to employees, and the timing of any such disclosure.*

(4) Notwithstanding subsection (3)(b)(v), where a non-accountable entity provides benefits referred to in subsection (2) that are not underwritten by an insurer, it shall disclose to its employees, prior to or at the time that the benefits are offered, that the benefits are not underwritten by an insurer and that the benefits would be payable from the net income or retained earnings of the entity.

5 Crown immunity.

6 Section 19(1) presently reads:

19(1) Only the following insurers are eligible for a licence under this Part:

- (a) a provincial company;*
- (b) an extra-provincial company;*
- (c) a federally authorized company;*

- (d) *an insurer made up of underwriters or syndicates of underwriters operating on the plan known as Lloyd's or any other plan approved by the Minister.*

7 Section 22 presently reads:

22(1) In this section, "extra-provincial Crown insurer" means an insurer that

- (a) *is formed by or under the laws of another province or territory,*
- (b) *has an exclusive right to perform an insurance activity in that province or territory, and*
- (c) *is beneficially owned or controlled by Her Majesty in right of that province or territory.*

(2) No extra-provincial Crown insurer or affiliate of an extra-provincial Crown insurer may hold or be issued a licence under this Act.

8 Section 32(1) presently reads:

32(1) The Minister may, when issuing or renewing a licence, impose on the licence any terms or conditions that are consistent with this Act that the Minister considers appropriate.

9 Regulation-making authority in respect of extra-provincial Crown insurers.

10 Section 82(1) presently reads:

82(1) No reciprocal insurance exchange may be licensed to undertake the type of automobile insurance that is evidenced by a motor vehicle liability policy.

11 Regulation-making authority for the establishment of procedures in respect of receiving, handling and resolution of complaints.

12 Section 613.1 presently reads in part:

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*

13 Section 626.1(4)(b) presently reads:

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

14 Section 653(2)(b) presently reads:

(2) The consumer representative referred to in subsection (1)(b)

- (b) must not be*
 - (i) an adjuster,*
 - (ii) a director or officer of a provincial company,*
 - (iii) a director or officer of an extra-provincial company,*
 - (iv) a director or officer of a federally authorized company,*
 - (v) a director or officer of a financial institution,*
 - (vi) an insurance agent,*
 - (vii) a director or officer of a life company,*
 - (viii) a director or officer of a mutual provincial company,*
 - (ix) a director or officer of a property and casualty company, or*
 - (x) a special broker.*

15 Section 656(4)(b) presently reads:

(4) The Lieutenant Governor in Council may make regulations

- (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;*

16 Section 660.2 presently reads:

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.*

17 Superintendent may issue guidelines and interpretation bulletins.

18 Insurers licensed to undertake insurance must be members of General Insurance OmbudService.

19 References to Provincial Treasurer changed to
Minister of Finance.