

2013 Bill 39

First Session, 28th Legislature, 62 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 39

ENHANCING CONSUMER PROTECTION IN AUTO INSURANCE ACT

THE PRESIDENT OF TREASURY BOARD AND
MINISTER OF FINANCE

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 39

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2013

ENHANCING CONSUMER PROTECTION IN AUTO INSURANCE ACT

(Assented to , 2013)

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 adding “or federally authorized company” after “provincial or extra-provincial company” wherever it occurs.

Explanatory Notes

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

2 Section 25 presently reads:

25(1) 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3 Section 29 is repealed and the following is substituted:

Expiry

29 The term of a licence is the term determined under the regulations.

4 Section 49 is repealed and the following is substituted:

Other information — licensed insurers

49 Every licensed insurer, other than a provincial company, must provide the Minister with

- (a) a copy of any change to its instrument of incorporation within 7 days of the making of the change;
- (b) notice of its being subject to an arrangement in a jurisdiction in which it is licensed other than Alberta that is in the nature of a compliance undertaking, and a copy of the compliance undertaking, within 7 days of the making of the arrangement.

5 Section 60 is amended by adding the following after clause

(a):

- (a.1) respecting the term of licence for the purpose of section 29;

(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 29 presently reads:

29 A licence expires on December 31 of the year in which it is issued or renewed.

4 Section 49 presently reads:

49 Every licensed insurer, other than a provincial company, must provide the Minister with a copy of

- (a) any change to its instrument of incorporation within 7 days of the change's being made, and*
- (b) notice of its being subject to an arrangement in a jurisdiction in which it is licensed other than Alberta that is in the nature of a compliance undertaking, within 7 days of the arrangement's being made.*

5 Section 60 reads in part:

60 The Lieutenant Governor in Council may make regulations

- (a) specifying an amount of base capital for life or property and casualty companies for the purposes of section 25(a);*

6 Section 99 is amended by striking out “a sum in cash or approved securities” **and substituting** “a sum in cash, approved securities or other prescribed assets”.

7 Section 100 is repealed and the following is substituted:

Guarantee fund

100(1) In addition to the reserve fund referred to in section 99, every reciprocal insurance exchange must maintain a guarantee fund in cash or approved securities in an amount calculated in accordance with the following formula:

$$(A - B - C - D) + E$$

where

A is all liabilities associated with the operation of the exchange, including liabilities under reciprocal contracts undertaken by the exchange;

6 Section 99 presently reads:

99 Every reciprocal insurance exchange must maintain with the principal attorney as a reserve fund a sum in cash or approved securities equal to an amount calculated in accordance with the following formula:

$$(50\% \text{ of } (A-B)) + (C-D)$$

where

A is the amount of premiums collected or credited to the accounts of subscribers on reciprocal contracts in force having one year or less to run;

B is the amount paid to licensed insurers to reinsure the reciprocal contracts referred to in A;

C is the amount of premiums collected or credited to the accounts of subscribers on reciprocal contracts in force that have more than one year to run less the amount of those premiums that is attributable to the expired portion of the contracts;

D is the amount paid to licensed insurers to reinsure the reciprocal contracts referred to in C less the amount that is attributable to the expired portion of the reinsurance contracts.

7 Section 100 presently reads:

100(1) In addition to the reserve fund referred to in section 99, every reciprocal insurance exchange must maintain a guarantee fund in cash or approved securities in an amount calculated in accordance with the following formula:

$$(A - B) + C$$

where

A is all liabilities associated with the operation of the exchange, including liabilities under reciprocal contracts undertaken by the exchange;

B is any amount that is recoverable from licensed insurers that have reinsured reciprocal contracts referred to in the description of A;

C is any amount that is recoverable from unlicensed reinsurers that have, with the prior approval of the Minister, reinsured reciprocal contracts referred to in the description of A;

D is all unearned premiums;

E is an amount set out in the regulations.

(2) Cash, approved securities or other prescribed assets maintained in the reserve fund referred to in section 99 must not be included in the guarantee fund.

8 Section 102 is amended by adding the following before subsection (1):

Investments

102(0.1) Every reciprocal insurance exchange that has its principal office in Alberta must ensure that the funds of the exchange are invested in accordance with Part 2, Subpart 11 as if the exchange were a provincial company.

B is any amount that is recoverable from licensed insurers that have reinsured the reciprocal contracts referred to in A;

C is an amount set out in the regulations.

(2) Cash or approved securities maintained in the reserve fund referred to in section 99 must not be included in the guarantee fund.

8 Section 102 presently reads:

102(1) Every reciprocal insurance exchange that has its principal office in a province or territory other than Alberta must ensure that the funds of the exchange that are required by the laws of the province or territory in which the principal office is located to be invested

(a) are invested in approved securities, and

(b) are within the limits for investments established by the laws of that province or territory for reciprocal insurance exchanges.

(2) Every reciprocal insurance exchange that has its principal office outside Canada must ensure that the funds of the exchange that are required by Part XIII of the Insurance Companies Act (Canada) to be invested

(a) are invested in approved securities, and

(b) are within the limits for investments established by Part XIII of the Insurance Companies Act (Canada).

9 The following is added after section 105:

Information to Minister

105.1 A licensed reciprocal insurance exchange must provide to the Minister, within the time specified by the Minister,

- (a) any information that is required by the Minister to enable the Minister to respond to inquiries on the exchange's market conduct activities;
- (b) any information that is required by the Minister for analytical or policy-making purposes.

10 Section 348 is repealed and the following is substituted:

Chief executive officer

348 The directors of a provincial company must appoint a chief executive officer who must be ordinarily resident in Canada, must specify the duties of the chief executive officer and, subject to section 350, may delegate to that officer any of the powers of the directors.

11 Section 549 is amended

(a) by adding the following after clause (b):

- (b.1) "additional coverage" means automobile insurance that may be made available by an insurer that supplements basic coverage, including, without limitation, collision coverage;

(b) by adding the following after clause (e):

- (f) "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.

9 Information to Minister.

10 Section 348 presently reads:

348 The directors of a provincial company must appoint from their number a chief executive officer who must be ordinarily resident in Canada and, subject to section 350, may delegate to that officer any of the powers of the directors.

11 Section 549 presently reads:

549 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 571 and 573;*
- (d) “contract” means a contract of automobile insurance;*
- (e) “insured” means a person insured by a contract whether named in the contract or not and includes any person who is stated in a contract to be entitled to benefits payable under the insurance mentioned in section 573 whether described in the contract as an insured person or not.*

12 Section 598 is repealed and the following is substituted:

Definitions

598 In this section and sections 599 to 608, “Board” means the Automobile Insurance Rate Board.

13 The heading preceding section 602 is repealed and the following is substituted:

**Premiums for Basic and
Additional Coverage**

14 Section 602 is repealed and the following is substituted:

Premiums

602(1) No insurer may charge or collect from an insured or an applicant for a contract an amount for basic coverage or additional coverage unless

- (a) the amount is based on a premium calculated under a rating program of the insurer approved by the Board or an amount determined by the Lieutenant Governor in Council under subsection (3), and
- (b) with respect to basic coverage, the amount is equal to or less than the maximum premium determined under the regulations.

(2) The Board may, subject to the regulations, approve rating programs for basic coverage and additional coverage.

(3) Notwithstanding subsection (2), the Lieutenant Governor in Council may determine the amount for basic coverage or additional coverage for any period the Lieutenant Governor in Council considers appropriate.

(4) The Lieutenant Governor in Council may make regulations

12 Section 598 presently reads:

598 In this section and sections 599 to 608,

- (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.*

13 The heading preceding section 602 presently reads:

Premiums for Basic Coverage

14 Section 602 presently reads:

602(1) The Board must, in accordance with the regulations, determine and set premiums for basic coverage annually, or for any shorter period prescribed by the regulations.

(2) Despite 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 after, or in effect on, the coming into force of this section, including, without limitation, regulations respecting the*

- (a) respecting the approval by the Board of rating programs for basic coverage and additional coverage;
- (b) respecting the maximum premium or the method of determining the maximum premium that may be charged for basic coverage;
- (c) requiring insurers to provide rating programs, reports and information to the Board, including, without limitation, regulations respecting the nature and contents of rating programs, reports or information to be provided, the form in which the rating programs, reports or information is to be provided and the times at which the rating programs, reports or information is to be provided;
- (d) respecting the use and confidentiality of the rating programs, reports and information referred to in clause (c);
- (e) 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 premium for basic coverage determined in accordance with the rating program approved by the Board or determined by the Lieutenant Governor in Council under subsection (3), as the case may be.

15 Section 603 is repealed.

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.

15 Section 603 presently reads:

603 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);*

16 Section 604 is repealed and the following is substituted:

Procedures

604(1) The Superintendent may establish written procedures to be followed by insurers in determining the amount payable for basic coverage or additional coverage by an insured or an applicant for a contract based on

- (a) the relevant amount of the premium for basic coverage or additional coverage determined pursuant to section 602, and
- (b) the amount of any discount or surcharge on that premium.

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

17 Section 605, the heading preceding section 606 and sections 606 and 607 are repealed.

- (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.*

16 Section 604 presently reads:

604(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 602, and*
- (b) *the amount of any discount or surcharge on that premium determined pursuant to section 603.*

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

17 Section 605, the heading preceding section 606 and sections 606 and 607 presently read:

605 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 602 less any discount or plus any surcharge on that premium determined pursuant to section 603.

Premiums for Additional Coverage

606(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.

18 Section 608 is repealed and the following is substituted:

Regulations

608 The Lieutenant Governor in Council may make regulations

- (a) respecting annual reports under section 601;
- (b) 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;
- (c) governing or otherwise respecting any matter related to premiums, charges, surcharges, discounts or other incentives related to automobile insurance;
- (d) respecting any matter that is to be prescribed under this Subpart;
- (e) defining for the purposes of this Subpart any term or expression used in this Subpart that is not defined in this Act.

607(1) The Board must, after an insurer has filed its schedule of premiums for additional coverage with the Board under section 606, 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.

(2) Despite subsection (1) and section 606, the Lieutenant Governor in Council may make regulations respecting the approval of premiums for additional coverage.

18 Section 608 presently reads:

608 The Lieutenant Governor in Council may make regulations

- (a) respecting annual reports under section 601;*
- (b) respecting the filing with the Board of a schedule of premiums for additional coverage under section 606;*
- (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 606;*
- (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 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;*
- (g) respecting any matter that is to be prescribed under this Subpart;*

19 Section 610(1)(e) is repealed.

20 Section 612 is repealed.

(h) 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.

19 Section 610(1)(e) presently reads:

610(1) In this section,

(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.

20 Section 612 presently reads:

612(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 555,*
- (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 or otherwise described in the regulations,*

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 is 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

21 Section 659(1) is amended by striking out “an accident” and substituting “bodily injury”.

- (a) *prescribing or otherwise describing, for the purposes of subsection (1)(f), any other matter for which a dispute resolution system or process may be used;*
- (b) *governing the procedures 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.*

21 Section 659(1) presently reads:

659(1) If a contract of group insurance, or a benefit provision in a contract of group insurance, under which the insurer undertakes to pay insurance money or provide other benefits if a group life insured becomes disabled as a result of bodily injury or disease is terminated, the insurer continues, as though the contract or benefit provision had remained in full force and effect, to be liable to pay insurance money or provide benefits in respect of a group life insured for liability arising from an accident or disease that occurred before the termination of the contract or benefit provision if the disability is reported to the insurer within the 6-month period following the termination or a longer continuous period specified in the contract.

22 Section 672(3) is repealed and the following is substituted:

(3) If satisfactory evidence is provided to the insurer that the insurance money exceeds the debt then owing to the creditor, the insurer may pay the excess directly to the debtor insured or to a debtor who is jointly liable for the debt with the debtor insured.

23 Section 725(2) is amended by striking out “with the insurer” and substituting “under subsection (1)”.

24 Section 736(3) is repealed and the following is substituted:

(3) If satisfactory evidence is provided to the insurer that the insurance money exceeds the debt then owing to the creditor, the insurer may pay the excess directly to the debtor insured or to a debtor who is jointly liable for the debt with the debtor insured.

25 Section 745 is amended by adding “this Subpart provides otherwise or” after “unless”.

26 Section 780 is amended

- (a) in clause (a)(ii) by adding “63,” after “sections”;
- (b) in clause (e)(ii) by striking out “, 605 and 606(1) and (2)” and substituting “and 602(1)”.

22 Section 672(3) presently reads:

(3) If the debtor insured provides evidence satisfactory to the insurer that the insurance money exceeds the debt then owing to the creditor, the insurer may pay the excess directly to that debtor insured.

23 Section 725(2) presently reads:

(2) If an insured purports to designate a beneficiary irrevocably in a will or in a declaration that is not filed with the insurer, the designation has the same effect as if the insured had not purported to make it irrevocable.

24 Section 736(3) presently reads:

(3) If the debtor insured provides evidence satisfactory to the insurer that the insurance money exceeds the debt then owing to the creditor, the insurer may pay the excess directly to that debtor insured.

25 Section 745 presently reads:

745 An insurer shall not in the policy give undue prominence to any provision or statutory condition as compared to other provisions or statutory conditions unless the effect of that provision or statutory condition is to increase the premium or decrease the benefits otherwise provided for in the policy.

26 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,

(ii) in Subpart 2, sections 68(2), 71, 72, 73, 74(1) and 75;

(e) in Part 5,

27 The following provisions are amended by striking out “book value” and substituting “market value”:

section 115(1) and (2);
section 245(2);
section 250(1), (4) and (5);
section 418(1).

28 The *New Home Buyer Protection Act* is amended by repealing section 29 and substituting the following:

Amends RSA 2000 cl-3

29(1) The *Insurance Act* is amended by this section.

(2) The following is added after section 548:

Home warranty insurance contracts

548.1(1) For the purposes of the *New Home Buyer Protection Act*, “warranty provider” means a person who

- (a) is licensed under this Act authorizing the person to undertake the class of home warranty insurance, or
- (b) is a person or of a class of person that is authorized by the regulations to undertake the class of home warranty insurance.

(2) In this section, “home warranty insurance contract” means a home warranty insurance contract as defined in the *New Home Buyer Protection Act*.

(3) The Lieutenant Governor in Council may make regulations

- (a) prescribing policy conditions that must be included in home warranty insurance contracts;
- (b) respecting terms, conditions, exclusions, waivers, limitations and definitions that may be included in a home warranty insurance contract;

- (ii) *in Subpart 2, sections 551(1) and (8), 555(3), 571(6), 605 and 606(1) and (2);*

27 Terminology change “book value” to “market value”.

28 Amends chapter N-3.2 of the Statutes of Alberta, 2012.
Section 29 presently reads:

29(1) The Insurance Act is amended by this section.

(2) The following is added after section 548:

548.1(1) In this section,

- (a) “home warranty insurance contract” means a contract of insurance issued by a warranty provider covering defects in the construction of a new home and consequential losses or costs incurred by the owner;*
- (b) “new home” means a new home as defined in the New Home Buyer Protection Act;*
- (c) “warranty provider” means a person who*
 - (i) has a licence under this Act authorizing the person to issue home warranty insurance contracts, or*
 - (ii) is a person or is of a class of person that is prescribed as authorized to issue home warranty insurance contracts.*

(2) The Lieutenant Governor in Council may make regulations

- (a) prescribing mandatory conditions that must be contained in a home warranty insurance contract;*
- (b) prescribing minimum standards for the coverage to be provided by a home warranty insurance contract,*

- (c) respecting minimum home warranty insurance coverage limits;
- (d) authorizing persons or classes of persons for the purpose of subsection (1)(b).

29(1) This Act, except sections 3, 5 and 28, comes into force on Proclamation.

(2) Sections 3 and 5 come into force on January 1, 2016.

including periods of coverage, the time at which coverage begins and coverage limits;

- (c) prescribing permitted exclusions of coverage, waivers, limitations or qualifications under a home warranty insurance contract;*
- (d) prescribing terms and conditions that must not be included in a home warranty insurance contract;*
- (e) prescribing terms and conditions that apply to warranty providers with respect to a home warranty insurance contract;*
- (f) prescribing persons or classes of persons authorized to issue home warranty insurance contracts for the purpose of subsection (1)(c)(ii).*

29 Coming into force.

