

2020 Bill 41

Second Session, 30th Legislature, 69 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 41

**INSURANCE (ENHANCING DRIVER AFFORDABILITY AND CARE)
AMENDMENT ACT, 2020**

THE PRESIDENT OF TREASURY BOARD AND MINISTER OF FINANCE

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 41

2020

INSURANCE (ENHANCING DRIVER AFFORDABILITY AND CARE) AMENDMENT ACT, 2020

(Assented to _____, 2020)

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

Amends RSA 2000 ci-3

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

2 The following is added after section 558:

Right to call expert witnesses

558.1(1) In this section,

- (a) “joint expert” means an expert that is jointly appointed by all parties to a motor vehicle injury proceeding;
- (b) “motor vehicle injury damages” means damages for bodily injury or death resulting from the use or operation of a motor vehicle as defined in the *Traffic Safety Act*;
- (c) “motor vehicle injury proceeding” means a civil proceeding in the Court of Queen’s Bench that includes a claim for motor vehicle injury damages.

(2) Subject to the regulations,

- (a) a party to a motor vehicle injury proceeding in which value of the claim for motor vehicle injury damages is \$100 000 or more shall not tender the following at trial:

Explanatory Notes

- 1** Amends chapter I-3 of the Revised Statutes of Alberta 2000.
- 2** Right to call expert witnesses.

- (i) expert evidence of more than 3 experts on the issue of motor vehicle injury damages;
 - (ii) more than one report on the issue of motor vehicle injury damages from each expert referred to in subclause (i),
- (b) a party to a motor vehicle injury proceeding in which value of the claim for motor vehicle injury damages is less than \$100 000 shall not tender the following at trial:
- (i) expert evidence of more than one expert on the issue of motor vehicle injury damages;
 - (ii) more than one report on the issue of motor vehicle injury damages from the expert referred to in subclause (i),

and the Court of Queen's Bench shall not allow a party to tender expert evidence at the trial of a motor vehicle injury proceeding if doing so would result in exceeding the limits set out in this subsection.

(3) Notwithstanding the limits set out in subsection (2), if the parties to a motor vehicle injury proceeding appoint a joint expert, a party may tender at trial the expert evidence of the joint expert.

(4) Notwithstanding the limits set out in subsection (2), with the consent of all other parties to a motor vehicle injury proceeding, a party may tender at trial

- (a) expert evidence of one or more additional experts, or
- (b) one or more additional reports from an expert referred to in subsection (2)(a)(i) or (b)(i) or clause (a).

(5) Notwithstanding the limits set out in subsection (2), on application by a party to a motor vehicle injury proceeding, the Court of Queen's Bench may, if satisfied that the conditions set out in subsection (6) are met, grant leave to

- (a) allow expert evidence of one or more additional experts to be tendered, or

- (b) allow the party to tender as evidence one or more additional reports from an expert referred to in subsection (2)(a)(i) or (b)(i) or (4)(a).

(6) The following are the conditions for the purposes of subsection (5):

- (a) the subject matter of the additional evidence to be tendered is not already addressed by expert evidence permitted under subsection (2) or (4);
- (b) without the additional expert evidence, the party making the application would suffer prejudice disproportionate to the benefit of not increasing the complexity and cost of the proceeding.

(7) In an application under subsection (5), a party must include the following:

- (a) the name of each expert whose evidence the party intends to tender at trial;
- (b) the scope of expertise of each expert whose evidence the party intends to tender at trial;
- (c) records that support the need for the additional evidence.

(8) Nothing in this section limits any authority of the Court of Queen's Bench to appoint the Court's own experts on the Court's own initiative.

(9) The Lieutenant Governor in Council may make regulations respecting exceptions to the application of subsection (2).

(10) This section applies to every motor vehicle injury proceeding commenced on or after January 1, 2021.

3 The following is added after section 585:

Direct compensation for property damage

585.1(1) This section applies if

3 Direct compensation for property damage; prejudgment interest.

- (a) an automobile or its contents, or both, suffers damage arising directly or indirectly from the use or operation in Alberta of one or more other automobiles,
- (b) the automobile that suffers the damage or in respect of which the contents suffer damage is insured under a contract evidenced by a motor vehicle liability policy issued by an insurer who is licensed to undertake automobile insurance in Alberta or who has filed with the Superintendent, in the form provided by the Superintendent, an undertaking to be bound by this section, and
- (c) at least one other automobile involved in the accident is insured under a contract evidenced by a motor vehicle liability policy issued by an insurer who is licensed to undertake automobile insurance in Alberta or who has filed with the Superintendent, in the form provided by the Superintendent, an undertaking to be bound by this section.

(2) This section applies with any necessary modifications in respect of an automobile, the owner, operator or lessee of which is a corporation to which the Superintendent has issued a financial responsibility card under section 825, if the corporation files with the Superintendent an undertaking to be bound by this section.

(3) Where this section applies, an insured may recover for the damages to the insured's automobile and its contents and for loss of use of the insured's automobile and its contents from the insured's insurer under the coverage described in section 559(1) as though the insured were a third party.

(4) Recovery under subsection (3) must be based on the degree of fault of the insurer's insured as determined under the fault determination rules prescribed by the regulations.

(5) If the insured is not satisfied that the degree of fault established under the fault determination rules accurately reflects the actual degree of fault, the insured may bring an action against the insurer and that action must be determined in accordance with the ordinary rules of law.

(6) If a dispute arises because the insured is not satisfied with the amount of a proposed settlement, the dispute must be determined using the dispute resolution process set out in section 519.

(7) Where this section applies,

- (a) an insured has no right of action against any person involved in the accident other than the insured's insurer for damages to the insured's automobile or its contents or for loss of use of the insured's automobile and its contents,
- (b) an insured has no right of action against a person under an agreement, other than a contract of automobile insurance, in respect of damages to the insured's automobile or its contents or for loss of use of the insured's automobile and its contents, except to the extent that the person is at fault or negligent in respect of those damages or that loss, and
- (c) an insurer, except as permitted by the regulations, has no right of indemnification from or subrogation against any person for payments made to the insurer's insured under this section.

(8) Nothing in this Part precludes an insurer, in a contract belonging to a class prescribed by the regulations, from agreeing with an insured that, in the event that a claim is made by the insured under this section, the insurer shall pay only

- (a) an agreed portion of the amount that the insured would otherwise be entitled to recover, or
- (b) the amount that the insured would otherwise be entitled to recover, reduced by a sum specified in the agreement.

(9) Subsection (8) does not apply unless, before the insurer enters into the contract referred to in that subsection, the insurer offers to enter into another contract with the prospective insured that does not contain the agreement referred to in that subsection but is identical to the contract referred to in subsection (8) in all other respects except for the amount of the premium.

(10) In the circumstances prescribed by the regulations, a contract belonging to a class prescribed by the regulations for the purpose of subsection (8) must provide that, in the event that a claim is made by the insured under this section, the insurer shall pay only the amount that the insured would otherwise be entitled to recover, reduced by a sum specified in the contract.

(11) Subsection (9) does not apply to a contract that contains a provision required by subsection (10).

(12) Where a contract contains an agreement referred to in subsection (8) or a provision required by subsection (10), the policy must have the words “This policy contains a partial payment of recovery clause for property damage” printed or stamped on its face in conspicuous type.

(13) This section does not affect an insured’s right to recover in respect of any physical damage coverage in respect of the insured automobile.

(14) This section does not apply to damage to those contents of an automobile that are being carried for reward.

(15) This section does not apply if both or all of the automobiles are owned by the same person.

(16) This section does not apply to damage to an automobile owned by the insured or to its contents if the damage is caused by the insured while driving another automobile.

(17) This section applies only in relation to loss or damage sustained on or after the date on which this section comes into force.

(18) The Lieutenant Governor in Council may make regulations

- (a) prescribing rules for determining the degree of fault in various situations for loss or damage arising directly or indirectly from the use or operation of an automobile;
- (b) respecting indemnification and subrogation when this section applies;

- (c) prescribing classes of contracts for the purpose of subsection (8);
- (d) prescribing the circumstances in which a contract belonging to a class prescribed under clause (c) must contain a provision described in subsection (10);
- (e) prescribing the amount, or the minimum or maximum amount, of a reduction required by a provision described in subsection (8)(b) or (10).

Prejudgment interest

585.2(1) Notwithstanding section 2(1) of the *Judgment Interest Act*, in an action for loss or damage from bodily injury or death arising directly or indirectly from the use or operation of an automobile, a court shall not award interest under that section for any period before the earlier of

- (a) the day on which the statement of claim commencing the action is served on the defendant, and
- (b) the day on which the plaintiff provides written notice to the insurer of the defendant of the plaintiff's intention to make a claim in respect of the loss or damage from bodily injury or death.

(2) Notwithstanding section 4(1) of the *Judgment Interest Act*, interest in respect of damages for non-pecuniary loss in an action for loss or damage from bodily injury or death arising directly or indirectly from the use or operation of an automobile must be calculated in accordance with section 4(2) of that Act in the same manner as interest awarded on pecuniary damages.

4 Section 599 is amended

- (a) **in subsection (9) by striking out** “Subject to the approval of the Lieutenant Governor in Council, the” **and substituting** “The”;
- (b) **by repealing subsection (10);**
- (c) **by repealing subsection (14) and substituting the following:**

4 Section 599 presently reads in part:

(9) 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.

- (14) The Board may make rules governing
- (a) the approval of rating programs and changes to ratings programs;
 - (b) the Board's procedures.

5 Section 602 is amended

(a) in subsection (1)

- (i) in clause (a) by striking out “approved by” and substituting “filed with and approved by”;**
- (ii) in clause (b) by striking out “with respect to basic coverage,”;**

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

(2.1) A rating program filed with the Board is deemed to be approved by the Board in the circumstances, if any, set out in the rules established by the Board under section 599(14)(a).

(c) in subsection (4)(a) by striking out “approval” and substituting “approval or deemed approval”;

(d) by adding the following after subsection (4):

(4.1) The Board may establish written interpretations of words and expressions used in provisions of the regulations made under subsection (4)(b) and, where the Board does so, those provisions of the regulations are to be construed in accordance with those interpretations.

(4.2) The *Regulations Act* does not apply to written interpretations established under subsection (4.1).

(e) in subsection (5) by striking out “for basic coverage” wherever it occurs.

6 Section 604(1) is amended by striking out “Superintendent” and substituting “Board”.

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

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

5 Section 602 presently reads in part:

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.

(4) The Lieutenant Governor in Council may make regulations

(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;

(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.

6 Section 604(1) presently reads:

7 Section 781(a) is amended by striking out “610.”

8 Section 789(1) is amended by striking out “Superintendent under section 604 or an order under section 610(2)” and substituting “Board under section 604”.

9 Section 3, to the extent that it enacts section 585.1 of the *Insurance Act*, has effect on January 1, 2022.

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.*

7 Section 781(a) presently reads:

781 A person who

- (a) contravenes an order or direction made under section 21(4), 327(2), 423, 480.1, 507, 610, 764, 766 or 788,*

is guilty of an offence.

8 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 or has contravened a written procedure established by the Superintendent under section 604 or an order under section 610(2), 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.

9 Coming into force.

RECORD OF DEBATE

Stage	Date	Member	From	To
Stage	Date	Member	From	To
Stage	Date	Member	From	To
Stage	Date	Member	From	To