



Environment and Labour

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*Office of the Superintendent of Insurance*

## **NOTICE RESPECTING AUTOMOBILE INSURANCE REFORM**

On October 30, 2003, Bill 1, An Act to Amend the Laws Respecting Automobile Insurance, was given Royal Assent. It brought into law a number of amendments to the *Insurance Act*, and related legislation. In addition, on October 30, 2003, supporting regulations were approved by Governor-in-Council. An electronic version of the Act and Regulations, is available on the Nova Scotia Government website at [www.gov.ns.ca](http://www.gov.ns.ca), click on auto insurance on the left hand side.

This Bulletin highlights provisions of the Legislation and Regulations, and provides additional information for your convenience.

### **Insurance Review Board**

The Insurance Review Board is established under this Act in Section 7 of the Bill, and where the Utility and Review Board was referenced in the *Insurance Act*, it is now replaced with the Insurance Review Board (see definition of "Board" under Section 3 of the Bill.)

The following contact information is available for the Insurance Review Board:

Ms. Donna Boutilier, Executive Officer  
P.O. Box 697  
Halifax, NS B3J 2T8

Ms. Boutilier will begin her new role on November 10, 2003. In the meantime, inquiries to the Board may be directed through the Office of the Superintendent of Insurance. Please see the Financial Institutions website for any further information [www.gov.ns.ca/enla/insurance](http://www.gov.ns.ca/enla/insurance)

Section 9 of Bill 1 repeals the "cooling off period" that was imposed last May, 2003 under Bill 45.

Section 153 of the *Insurance Act*, which requires rate filings to be made to the Board, remains unchanged. However, Bill 1 does not require filing of rates for companies to implement the rate reductions prescribed. Sections 154 and 155 of the *Insurance Act* have been repealed and substituted with those provisions outlined in Section 18 of Bill 1. It is assumed that companies will file rates applicable to Optional Section B Benefits, as outlined in regulation. Such filings may be directed to the address noted above. Section 18 provides:

- that an insurer shall not charge an amount more than 80% of the “previous rates”, which is defined to mean “the rates that the insurer had filed with the Nova Scotia Utility and Review Board and that were in effect on the first day of May, 2003.” Each insurer will want to conduct an evaluation of what rates were in effect on May 1, 2003.
- these provisions do apply to miscellaneous vehicles because these fall within the definition of “automobile” under the *Insurance Act*, rate filings are made for these vehicles and thus the definition of “previous rates” captures such filings.
- rate reductions apply to liability, accident benefits, collision and comprehensive and Section D provisions of the policy.
- these provisions do apply to Facility Association. However, they are applicable only to April 1, 2004 or when the NS Insurance Review Board approves FA’s next rate filing.
- in addition Section 18 of Bill 1 provides for reimbursement on a pro rata basis of any excess premium paid by the insured to the insurer on the remainder of a contract that is in effect on the November 1, 2003. If the contract would expire before January 31, 2003, a credit may be extended for the reimbursement amount. Insurers should use their discretion in determining the most effective method of returning these reimbursements to their customers.
- an insurer may not apply for an increase in rates before July 1st, 2004 to be effective November 1, 2004.
- Filing of a risk-classification system shall be made by January 1, 2004, and any changes to it must be approved by the Board. The risk classification to be filed in January is that one currently in use by the insurer. Insurers are not required for purposes of this filing to recalculate the risk classification system that will be used in compliance with regulations governing risk classification systems, which come into effect November 1, 2004. Additional filings will be required in keeping with those regulations.
- Regulations respecting the Insurance Review Board provide that the Board must examine the use of gender as a risk classification factor and report its findings no later than November 1, 2004. In addition, the Automobile Insurance Prohibited Risk-Classification Factors Regulations prescribe a number of factors that insurers are not permitted to include. These include not at fault claims, claims made more than 6 years before the year for which contract is to be issued, a lapse in coverage of less than 24 months (except as provided in clause 4), age and marital status, etc. Inclusion of risk-classification factors that reflect driving experience does not contravene clause 1(d) (age). For FA, these regulations come into effect April 1, 2004. Otherwise, these regulations come into effect November 1, 2004.

- Please see Section 18 for details regarding filing time frames. In addition Section 20 provides that the Board shall have access to the records of the insurer.

The prohibition against group rates, previously found in Section 159 of the *Insurance Act* is repealed. Additional regulatory authority is extended in the substituted Section 159.

### **Withdrawal of Insurance Companies**

Section 21 of Bill 1 adds new provisions to the *Insurance Act* governing withdrawal from the Province. An insurer withdrawing from the Province is required to provide notice, six months in advance, of any such action. A Notice of Withdrawal Form has been prepared by the Superintendent's Office and is attached for information.

Section 23 amends Subsection 317(3) of the *Insurance Act* by substituting penalty provisions which, among other things, provide that an insurer that withdraws from the business of automobile insurance in contravention of Section 159B is guilty of an offence and liable to a fine not exceeding one million dollars.

### **Statutory Conditions**

Statutory Conditions applying to the automobile insurance contract are renamed "mandatory" conditions and they are moved to regulation to clarify that they can be amended in future by regulation. They remain a part of every contract and shall be printed in every policy under the heading Mandatory Conditions.

One amendment is made to the Mandatory Conditions found in the accompanying regulations. This change is to reflect the amendment made to the *Limitations of Actions Act* under Section 27 of Bill 1, which changes the period during which an action may be initiated from two years to three years under Clause 6(3), page 5 of the Mandatory Conditions.

See Section 17 of Bill 1, and accompanying regulations.

### **Consumer Measures**

Under Section 12 of Bill 1, Section 113 is added to allow a consumer to exclude a driver from a policy and provides that an insurer is not liable to any person under the contract of the Act with respect to any loss or damage that occurs while the excluded driver is driving an automobile insured under the contract.

Under Section 14 of Bill 1, the minimum automobile liability insurance requirement is increased from \$200,000. to \$500,000. This change comes into effect on April 1, 2004. (See Section 36 of Bill 1).

Under Section 15 of Bill 1, a number of corrections are made to the criminal code references in the *Insurance Act*; recovery of damages cannot be made by those in the course of committing offences noted (impaired driving, breathalyzer offence, refusing road-side test, or refusing breathalyzer test) unless he establishes that his impairment by alcohol or drug was not the proximate cause of the accident. In addition, criminals who are in flight from police and convicted of the offence of dangerous driving cannot claim benefits under provisions added in Section 15(2) of the Bill.

In addition, see amendments made under the *Motor Vehicles Act* regarding changes in fines relating to driving without insurance. These fines are increased.

### **Tort Reform Measures**

Section 12 of Bill 1 provides, in Section 113A, an amendment pertaining to the collateral benefits rule; Section 113B(1) provides the definitions for minor injury and serious impairment, 113B(2) provides for reduction of income loss to net income, and reductions for loss of earning capacity, also based on net income. Additional particulars are found in regulation.

Section 113B(4) provides that the owner, operator or occupants of an automobile, any person present at the incident, and any person who may be vicariously liable, are only liable for damages for any award for pain and suffering from bodily injury or death arising from the use of an automobile for a minor injury to the amount prescribed in the regulations. Regulations prescribe that amount at \$2500.

Section 113C provides for the discount rate that may be set by regulation. It is set at 3.5% and a formula is provided to change this rate in future years based on the formula (Government bond rate-consumer price index).

Section 113D allows a company to provide consumers with an optional tort package if the consumer wishes to retain the right to be compensated for minor injuries.

Amendments to the *Judicature Act*, provided in Section 26 of Bill 1, allow a court to impose a structured settlement, allowing for periodic payments in place of a lump sum award.

### **Motor Vehicle Act Amendments**

In Part IV of Bill 1, a number of amendments are made to the Motor Vehicle Act to reflect the change in requirement to have \$500,000 in third party liability coverage, extends the ability to require all drivers to provide proof of insurance before registering a vehicle, and increases a number of the fines: for driving without insurance, the fine is increased to \$1000/45 days for a 1<sup>st</sup> offence, \$2000/90 days for second offence, and \$5000/120 days for third offence.

## **Fines and Penalties**

Section 23 of Bill 1 amends a number of penalty provisions in the *Insurance Act* as follows:

- the general penalty provision found in Section 317(1) of the Insurance Act is increased from \$200 to a maximum of \$5000
- a company that fails to reimburse a consumer is liable to a fine not exceeding \$1000
- a company that files information with the Insurance Review Board that is likely to mislead is liable to a maximum fine of \$250,000
- a company that contravenes the withdrawal provisions is liable to a fine not exceeding \$1,000,000

## **Effective Dates**

Section 36 of Bill 1 provides for the dates upon which the various sections of the Bill come into effect.

## **Milestones**

The following dates are significant under these reforms:

- November 1, 2003 legislation in effect unless otherwise indicated.
- January 1<sup>st</sup> 2004, filings with the Insurance Review Board regarding current risk classification systems due
- January 31<sup>st</sup>, 2004 reimbursement of excess premium to an insured required to be completed by insurers and Facility Association
- April 1, 2004 increase in liability insurance requirement to \$500,000 applicable
- April 1, 2004 Automobile Insurance Prohibited Risk-Classification Factors Regulations applicable to Facility Association
- July 1, 2004 an insurer may apply to the Insurance Review Board for an increase in rates, to be effective November 1, 2004
- November 1, 2004 Automobile Insurance Prohibited Risk-Classification Factors

Regulations applicable to insurers

- November 1, 2004 Insurance Review Board Report on rates and availability of property and liability insurance in the Province due
- November 1, 2004, Insurance Review Board Report examining the use of gender as a risk-classification factor by insurers due

Sincerely,

Catherine Smith  
Superintendent of Insurance