

2002

CHAPTER 44

An Act to amend *The Automobile Accident Insurance Act* and to make consequential amendments to certain other Acts

(Assented to July 10, 2002)

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

Short title

1 This Act may be cited as *The Automobile Accident Insurance Amendment Act, 2002*.

R.S.S. 1978, c.A-35 amended

2 *The Automobile Accident Insurance Act* is amended in the manner set forth in this Act.

New section 2

3(1) Section 2 is repealed and the following substituted:

“Interpretation of Act

2(1) In this Act:

- (a) **‘accident’** means any event in which property damage or bodily injury is caused by a motor vehicle;
- (b) **‘administrator’** means the person designated as the administrator pursuant to *The Vehicle Administration Act*;
- (c) **‘basic premium’** means the appropriate basic premium established pursuant to subsection 5(2);
- (d) **‘beneficiary’** means a person who applies for and is entitled to receive benefits;
- (e) **‘benefits’** means, except when used in reference to benefits payable pursuant to another Act or any legislation of another jurisdiction, any benefits payable pursuant to Part II or VIII;
- (f) **‘board’** means:
 - (i) the Rates Appeal Board continued pursuant to section 10; or
 - (ii) if the Lieutenant Governor in Council issues an order pursuant to subsection (2), the Highway Traffic Board continued pursuant to *The Highway Traffic Act*;
- (g) **‘bodily injury’** means any physical or mental injury, including any acquired brain injury, permanent physical or mental impairment or death;

- (h) **'bodily injury caused by a motor vehicle'** means bodily injury caused by a motor vehicle, by the use of a motor vehicle or by a load, including bodily injury caused by a trailer used with a motor vehicle, but does not include bodily injury mentioned in subsection 101(2);
- (i) **'bodily injury liability insurance'** means the obligation of the insurer pursuant to this Act to pay insurance money in the event of bodily injury to any person as a result of one of the perils mentioned in section 42;
- (j) **'catastrophic injury'** means a catastrophic injury as defined in the regulations made pursuant to section 81 or 216;
- (k) **'certificate'** means a certificate of insurance issued in accordance with this Act;
- (l) **'child'**, with respect to an insured, includes:
- (i) a person to whom the insured stands in the place of a parent; and
 - (ii) a person for whose support an insured was, at the date of the accident, liable pursuant to any Act or Act of the Parliament of Canada;
- (m) **'claimant'** means a person who applies for a benefit;
- (n) **'comprehensive insurance'** means the obligation of the insurer to pay insurance money pursuant to Part III to an insured in the event of loss or damage to a motor vehicle;
- (o) **'dealer'** means a person who is the holder of a valid licence issued pursuant to *The Motor Dealers Act*;
- (p) **'employment'** means the state of being employed for remuneration;
- (q) **'fund'** means the Saskatchewan Auto Fund established pursuant to section 87;
- (r) **'garage'** means a building or part of a building within or in connection with which service is rendered on a motor vehicle in the ordinary course of business;
- (s) **'homemaker'** means a person who:
- (i) manages, maintains and controls an independent domestic establishment without remuneration; and
 - (ii) is not employed;
- (t) **'insurance'** means insurance provided pursuant to this Act;
- (u) **'insurance money'** means any payment that the insurer is authorized or required to make pursuant to Part III or IV;

- (v) **'insured'** means:
- (i) a person to whom or with respect to whom benefits are payable pursuant to Part VIII;
 - (ii) a person to whom insurance money is payable pursuant to Part III; or
 - (iii) a person to whom or on whose behalf insurance money is payable for bodily injury or loss or damage to property as a result of one of the perils mentioned in section 42;
- (w) **'insurer'** means Saskatchewan Government Insurance;
- (x) **'licence period'** means:
- (i) in the case of an owner's certificate, any period for which a certificate of registration for a motor vehicle, trailer or semi-trailer is issued pursuant to *The Vehicle Administration Act*:
 - (A) commencing on the time and day the certificate of registration is issued; and
 - (B) ending on the day on which the certificate of registration expires; and
 - (ii) in the case of an operator's certificate, the period:
 - (A) commencing on the first day of the month next following the anniversary of the birth of the applicant; and
 - (B) ending 12 months from the day mentioned in paragraph (A);
- (y) **'load'** means any property carried in or on a motor vehicle;
- (z) **'minister'** means the member of the Executive Council to whom for the time being the administration of this Act is assigned;
- (aa) **'motor vehicle'** means any motor vehicle propelled by any power other than muscular force and adapted for transportation on highways, but not on rails;
- (bb) **'necessities of life'** means food, clothing, lodging and other reasonable necessities for the maintenance of life and continuation of a person's health;
- (cc) **'nuclear energy hazard'** means the radioactive, toxic, explosive or other hazardous properties of a nuclear substance within the meaning of the *Nuclear Energy Act* (Canada);
- (dd) **'operator's certificate'** means a certificate of insurance issued to a person holding a licence or other permit to drive a motor vehicle pursuant to *The Vehicle Administration Act*;

(ee) **‘owner’s certificate’** means a certificate of insurance issued to a person with respect to the ownership of a motor vehicle for which a certificate of registration, a dealer’s certificate or a trailer certificate of registration has been issued pursuant to *The Vehicle Administration Act*;

(ff) **‘parent’** means:

- (i) the mother or the father of a child;
- (ii) a person to whom custody of a child has been granted by a court of competent jurisdiction or by a custody agreement; or
- (iii) a person with whom a child resides and who stands in the place of a parent to the child;

(gg) **‘permanent impairment’** includes a permanent anatomical or physiological deficit, a permanent disfigurement, a permanent acquired brain injury or any other prescribed permanent impairment;

(hh) **‘power unit’** means a motor vehicle used solely for the purpose of drawing a semi-trailer;

(ii) **‘practitioner’** means:

- (i) a physician or surgeon;
- (ii) a dentist;
- (iii) a physical therapist;
- (iv) an optometrist;
- (v) a psychologist;
- (vi) a psychiatrist;
- (vii) a chiropractor;
- (viii) an occupational therapist;
- (ix) a massage therapist; or
- (x) any other prescribed practitioner;

(jj) **‘prescribed’** means prescribed in the regulations;

(kk) **‘property damage caused by a motor vehicle’** means the loss or damage to property for which property damage liability insurance is provided pursuant to this Act;

(ll) **‘property damage liability insurance’** means the obligation of the insurer to pay insurance money pursuant to this Act in the event of loss or damage to property as the result of one of the perils mentioned in section 42;

(mm) **‘province’** means a province or territory of Canada;

(nn) **'public highway'** means a road allowance or a road, street or lane that is designed and intended for or used by the general public for the passage of motor vehicles and includes:

(i) any bridge, culvert, drain or other public improvement erected on or in connection with a public highway; and

(ii) any parkway, driveway, square or place that is designed and intended for or used by the general public for the passage of motor vehicles;

(oo) **'public service motor vehicle'** means a motor vehicle, trailer or semi-trailer registered as a public service motor vehicle pursuant to *The Vehicle Administration Act*;

(pp) **'semi-trailer'** means a vehicle that:

(i) is at any time drawn on a public highway by a motor vehicle;

(ii) is designed to convey goods or persons or to serve as living quarters for persons; and

(iii) is so designed that its weight and the weight of its load is carried partly on its own axle or axles and partly on another motor vehicle;

(qq) **'snowmobile'** means a snowmobile as defined in *The Snowmobile Act*;

(rr) **'spouse'** means:

(i) the spouse of the insured who is, at the date of the accident, residing with the insured; or

(ii) a person with whom, at the date of the accident, the insured is cohabiting and has cohabited as a spouse:

(A) continuously for a period of not less than two years; or

(B) continuously for a period of not less than one year, if they are parents of a child;

(ss) **'surviving spouse'** means a spouse of an insured and includes a former spouse of an insured who, at the date of the accident:

(i) had been living separate and apart from the insured for one year or less;

(ii) was receiving spousal support from the insured; or

(iii) had a court order or agreement with the insured entitling that person to spousal support from the insured;

(tt) **'trailer'** means a trailer as defined in *The Highway Traffic Act*;

(uu) **'violation record'** includes a report made by any authority acting in an official capacity stating that a person has:

- (i) been found at fault with respect to a motor vehicle accident; or
- (ii) been convicted of an offence relating to the use or operation of a motor vehicle.

(2) The Lieutenant Governor in Council may order that all appeals to the board pursuant to section 7.2 or 10.1 are to be heard by the Highway Traffic Board continued pursuant to *The Highway Traffic Act*.

(3) If the Lieutenant Governor in Council issues an order pursuant to subsection (2):

- (a) the order must state the date that it comes into force, which must be a date at least 30 days from the date that the order is published in the Gazette; and
- (b) the order must be published in the Gazette as soon as possible after it is issued.

(4) On and after the date that an order made pursuant to subsection (2) comes into force:

- (a) the Rates Appeal Board shall not hear any further appeals pursuant to this Act;
- (b) if the Rates Appeal Board has heard an appeal pursuant to this Act but has not, at the date of the order, issued its decision, the Rates Appeal Board shall continue to consider the appeal and issue its decision and this Act continues to apply to the Rates Appeal Board and the appeal as if the order had not been made;
- (c) notwithstanding any other provision of this Act or any other law, if an appeal has been made to the Rates Appeal Board but has not been heard by the Rates Appeal Board as at the date of the order:
 - (i) the Highway Traffic Board shall hear and determine the appeal in accordance with this Act; and
 - (ii) the appeal shall be continued before the Highway Traffic Board as if the appeal had been originally made to the Highway Traffic Board pursuant to this Act; and
- (d) all orders made by the Rates Appeal Board become orders of the Highway Traffic Board and may be enforced and dealt with as if they were issued by the Highway Traffic Board".

(2) Subsection 2(1) is amended:

(a) by repealing subclause (h) and substituting the following:

"(h) 'bodily injury caused by a motor vehicle' means bodily injury caused by a motor vehicle, by the use of a motor vehicle or by a load, including bodily injury caused by a trailer used with a motor vehicle, but does not include bodily injury mentioned in subsections 20(3) and 101(2)";

(b) by repealing clause (v) and substituting the following:

“(v) **‘insured’** means:

- (i) a person to whom or with respect to whom benefits are payable pursuant to Part II or VIII, as the case may be;
- (ii) a person to whom insurance money is payable pursuant to Part III; or
- (iii) a person to whom or on whose behalf insurance money is payable for bodily injury or loss or damage to property as a result of one of the perils mentioned in section 42”;

(c) by adding the following clause after clause (ff):

“(ff.1) **‘Part VIII beneficiary’** means any person who, if he or she were to sustain a bodily injury caused by a motor vehicle arising out of an accident, would be entitled to benefits pursuant to Part VIII and includes any Saskatchewan resident with respect to whom the insurer has not received a tort election, but does not include a person receiving a benefit pursuant to Part II in relation to the death of an insured”; **and**

(d) by adding the following clause after clause (ss):

“(ss.1) **‘tort election’** means a written election made by a Saskatchewan resident that complies with the requirements of Part IV”.

New sections 6 to 7.5**4 Sections 6 to 7.4 are repealed and the following substituted:****“Safety rating assessment**

6(1) In this section and in sections 7 to 7.5 and 81:

(a) ‘chargeable incident’ means:

- (i) a motor vehicle accident:
 - (A) in which loss or damage arises on account of which the insurer makes a payment pursuant to this Act and the amount of the loss or damage is in excess of the prescribed amount; and
 - (B) with respect to which the driver of the motor vehicle is at least 50% at fault for the accident; or
- (ii) a conviction for contravening:
 - (A) a prescribed provision of *The Highway Traffic Act*;
 - (B) section 220, 221, 236, paragraph 249(1)(a), subsection 249(3) or (4), section 252, paragraph 253(a) or (b), subsection 255(2) or (3) or subsection 259(4) of the *Criminal Code*, where the contravention is committed by means of a motor vehicle;

(C) subsection 254(5) of the *Criminal Code* for failure or refusal to comply with a demand pursuant to section 254 of the *Criminal Code*;

(D) section 130 of the *National Defence Act* (Canada) for having contravened paragraphs 253(a) and (b), subsection 254(5) or subsection 255(2) or (3) of the *Criminal Code*;

(E) any other prescribed offence; or

(F) any law of the United States of America that is substantially similar to any of the provisions mentioned in paragraphs (A) to (E);

(b) **'discount'** means the discount from the premium described in subclause (4)(b)(i);

(c) **'driver'** means the person who is the operator of a motor vehicle regardless of whether that person has a valid licence at the time of a chargeable incident;

(d) **'premium'** means the basic premium set pursuant to subsection 5(2);

(e) **'safety rating'** means a driver's safety rating as determined in the manner set out in the regulations;

(f) **'surcharge'** means the surcharge described in subclause (4)(b)(ii).

(2) The insurer shall keep a record of all chargeable incidents for every driver.

(3) The insurer shall enter the number of chargeable incidents against a driver in the manner set out in the regulations.

(4) The insurer shall, in the manner set out in the regulations:

(a) determine a driver's safety rating using the number of chargeable incidents entered against the driver; and

(b) based on the driver's safety rating, determine for the driver:

(i) the amount of any discount from the premium that the driver is entitled to; or

(ii) the amount of any surcharge that the driver must pay.

(5) If the insurer has determined that a driver is entitled to a discount and the driver, as the owner of a motor vehicle, is purchasing or renewing an owner's certificate for a prescribed motor vehicle or a motor vehicle that is a member of a prescribed class of motor vehicles, the insurer shall deduct the amount of the discount from the premium for that motor vehicle.

(6) If the insurer has determined that a driver must pay a surcharge, the insurer shall send a written notice to the driver that indicates:

- (a) the amount of the surcharge that must be paid;
- (b) the time within which the surcharge must be paid; and
- (c) if the insurer considers it appropriate, the manner in which the surcharge must be paid.

(7) On receipt of a written notice sent pursuant to subsection (6), the driver shall pay the surcharge in the amount, within the time and in the manner set out in the written notice.

(8) If liability of the driver of a motor vehicle for loss or damage has been in issue before a court of competent jurisdiction, the order, decision or judgment of the court that finally concludes and determines the issue shall, for the purposes of this section, be conclusive:

- (a) of the amount of loss or damage;
- (b) as to whether the loss or damage was caused by fault on the part of the driver of the motor vehicle;
- (c) of the degree to which the driver of the motor vehicle was at fault; and
- (d) of the extent of the liability for the loss or damage of the driver of the motor vehicle.

“Notice of changes to safety ratings

7 The insurer shall promptly send a written notice to a driver when the driver’s safety rating is changed as a result of a chargeable incident.

“Sending of written notices

7.1(1) The insurer shall send a written notice pursuant to section 6 or 7 by ordinary mail.

(2) A written notice that is sent pursuant to subsection (1) is deemed to have been received on the tenth day following the day of mailing, unless the person to whom it was mailed establishes that, through no fault of the person, he or she did not receive the written notice or that he or she received it at a later date.

“Appeals of safety rating to board

7.2(1) In this section and sections 7.3 and 7.4:

- (a) **‘business day’** means a day on which the insurer is normally open for business, but does not include:
 - (i) a Saturday; or
 - (ii) a holiday;
- (b) **‘notice of dispute’** means a notice filed by a driver pursuant to this section contesting the driver’s safety rating.

- (2) A driver may appeal to the board only when the insurer's decision to change the driver's safety rating results from a chargeable incident described in subclause 6(1)(a)(i).
- (3) No appeal may be made to the board with respect to the insurer's decision to change a driver's safety rating as a result of a chargeable incident described in subclause 6(1)(a)(ii).
- (4) A driver who wishes to appeal shall:
- (a) file a notice of dispute at the office of the insurer within 30 days after receiving written notice of the change in the driver's safety rating; and
 - (b) pay the prescribed fee.
- (5) On the application of a driver making an appeal pursuant to this section, the board may grant leave to file a notice of dispute after the expiration of the 30-day period mentioned in clause (4)(a) where the board considers it appropriate to do so.
- (6) On receipt of a notice of dispute pursuant to this section, the insurer shall deliver to the board:
- (a) the notice of dispute; and
 - (b) copies of all documents in the insurer's possession or control that, in the opinion of the insurer, are relevant to the appeal, other than any report furnished pursuant to section 68, 69 or 70.
- (7) On receipt of the notice of dispute pursuant to subsection (6), the board shall cause written notice to be sent to the driver of the time and place of the hearing.
- (8) The board shall set the time for the hearing not later than 45 business days after the date on which the written notice mentioned in subsection (7) is sent to the driver.
- (9) A written notice of the time and place set for the hearing may be sent by ordinary mail to the last known address of the driver.
- (10) A written notice that is sent pursuant to subsection (9) is deemed to have been received on the tenth day following the day of mailing, unless the person to whom it was mailed establishes that, through no fault of the person, he or she did not receive the written notice or that he or she received it at a later date.
- (11) Where the driver who made the appeal fails to attend the hearing, the board may, on the proof of sending of the notice of hearing, proceed with the hearing in the absence of the driver.

“Hearing of appeal by board

7.3(1) At the hearing of an appeal pursuant to section 7.2, the board shall consider:

- (a) the documents delivered pursuant to clause 7.2(6)(b);
- (b) any evidence put forward by the insurer; and
- (c) any evidence put forward by the driver.

(2) Subject to subsection (3), on appeal the board shall either:

- (a) confirm the insurer’s decision regarding the driver’s safety rating; or
- (b) vary the driver’s safety rating by reducing the number of points assigned by the insurer to the driver for the driver’s chargeable incident.

(3) The board shall not reduce the points assigned to a driver for a chargeable incident below zero.

(4) A decision of the board pursuant to this section is final and is not subject to appeal.

“Appeal not to stay decision

7.4(1) An appeal to the board pursuant to section 7.2 does not stay the insurer’s decision or affect the validity of the insurer’s decision respecting a driver’s safety rating.

(2) If the board varies a driver’s safety rating on appeal, the insurer shall refund to the driver any premium or surcharge that the driver paid and that the board determines the driver was not liable to pay.

“Proof

7.5 On an appeal pursuant to section 7.2, any document delivered by the insurer pursuant to clause 7.2(6)(b) is admissible as proof, in the absence of evidence to the contrary, of the facts contained in the document”.

New section 8**5 Sections 8 and 9 are repealed and the following substituted:****“Power to vary rates**

8(1) The insurer may consider the potential hazard or risk associated with providing a certificate of insurance to an applicant for or holder of a certificate of insurance:

- (a) at the time an applicant or holder applies to obtain or renew a certificate of insurance; or
- (b) at any time after a certificate of insurance is issued.

(2) If the insurer considers it necessary after considering the associated potential hazard or risk, the insurer may:

- (a) declare that the applicant or holder is entitled to a refund of or discount from the basic premium that the applicant or holder is required to pay pursuant to subsection 5(2); or
- (b) declare that the applicant or holder must pay an amount assessed by the insurer in addition to the basic premium that the applicant or holder is required to pay pursuant to subsection 5(2).

(3) If the insurer declares pursuant to clause (2)(b) that the applicant or holder must pay an amount in addition to the basic premium that the applicant or holder is required to pay pursuant to subsection 5(2), the applicant or holder must pay that additional amount assessed by the insurer within the time and in the manner that the insurer may direct in writing”.

New sections 10.1 and 11

6 Sections 10.1 and 11 are repealed and the following substituted:

“Appeals of additional premium to board

10.1(1) If a person wishes to appeal from the insurer’s decision to declare that the person must pay an additional premium pursuant to section 8, the person shall:

- (a) file a notice of appeal and written reasons for the appeal with the insurer; and
- (b) pay the prescribed fee.

(2) An appeal must be made within 90 days after the date that the person received written notice of the requirement to pay an additional premium pursuant to section 8.

(3) The board may grant special leave to file an appeal pursuant to subsection (1) after the expiration of the 90-day period mentioned in subsection (2).

(4) If an appeal is made to the board pursuant to this section, the board may confirm, reduce, increase or vary the additional premium assessed.

(5) A decision of the board pursuant to this section is final and is not subject to appeal.

“Appeal pursuant to section 10.1 not to stay decision

11(1) An appeal to the board pursuant to section 10.1 does not stay the insurer’s decision or affect the validity of the insurer’s declaration respecting an additional premium to be paid by the person who is the subject of the declaration.

(2) If the board reduces an assessment on appeal, the insurer shall refund to the person who launched the appeal any additional premium that the person paid and that the board determines the person was not liable to pay.

(3) Notwithstanding the fact that an appeal has been made to the board pursuant to section 10.1, unless the person who launched the appeal has paid the amount of the additional premium:

- (a) the administrator pursuant to *The Vehicle Administration Act* shall not issue or renew a certificate of registration, licence or permit for a vehicle or licence or other permit to drive pursuant to the authority of *The Vehicle Administration Act* respecting the person who launched the appeal while an appeal pursuant to this section is pending before the board; and

(b) the administrator pursuant to *The Vehicle Administration Act* may cancel a certificate of registration, licence or permit for a vehicle or licence or other permit to drive pursuant to the authority of *The Vehicle Administration Act* respecting the person who launched the appeal while an appeal pursuant to this section is pending before the board.

(4) If a person who launched an appeal to the board pursuant to section 10.1 pays the amount of the additional premium as required pursuant to subsection (3) and the board grants that person's appeal, the insurer shall immediately refund to that person the amount of the additional premium that was paid".

Section 14 repealed

7 Section 14 is repealed.

New section 18

8 Section 18 is repealed and the following substituted:

"Owner insured in another jurisdiction

18(1) In this section:

(a) **'non-resident owner'** means an owner of a vehicle who is a resident of another province, state or country;

(b) **'vehicle'** means a vehicle that:

(i) is operated in Saskatchewan; and

(ii) is registered in Class A, C, D or F pursuant to *The Vehicle Classification and Registration Regulations*.

(2) Parts III and IV do not apply to a non-resident owner of a vehicle, if the administrator is satisfied that the non-resident owner is insured against the non-resident owner's liability for loss or damage to the person or property of others arising out of the use, operation or ownership of the vehicle.

(3) The Lieutenant Governor in Council may order that the provisions of subsection (2) are not to operate with respect to any vehicle or class of vehicles owned by a resident of any province, state or country specified in the order".

New Part II

9 Part II is repealed and the following substituted:

**"PART II
Bodily Injury Benefits**

**"DIVISION 1
Application of Part and General Benefits**

"Application of Part

20(1) This Part applies to any person who has:

(a) sustained bodily injury caused by a motor vehicle arising out of an accident occurring in Canada or the United States of America or on a vessel travelling between ports of those countries; and

(b) filed with the insurer a tort election pursuant to subsection 40.2(1).

- (2) A person who is entitled to benefits pursuant to this Part is not entitled to benefits pursuant to Part VIII other than a death benefit pursuant to Part VIII relating to the death of a Part VIII beneficiary.
- (3) Notwithstanding subsection (1), this Part does not apply to bodily injury caused by a motor vehicle, if the bodily injury:
- (a) is caused while the motor vehicle is not in motion;
 - (b) subject to subsection (4), is caused:
 - (i) by, or by the use of, a device that can be operated independently and that is mounted on or attached to the motor vehicle;
 - (ii) by a self-propelled agricultural implement within the meaning of *The Highway Traffic Act*;
 - (iii) by a wheelchair as defined in *The Highway Traffic Act*;
 - (iv) by a special mobile machine as defined in *The Highway Traffic Act*;
 - (v) by a snowmobile as defined in *The Snowmobile Act*;
 - (vi) by an all terrain vehicle as defined in *The All Terrain Vehicles Act*; or
 - (vii) by any other prescribed motor vehicle or prescribed class of motor vehicles;
 - (c) is caused by the autonomous act of an animal that is part of the motor vehicle's load;
 - (d) is caused by an action performed by the insured in connection with the maintenance, repair, alteration or improvement of the motor vehicle;
 - (e) is caused while putting a load on or taking a load off the motor vehicle; or
 - (f) is caused as the result of a motor vehicle contest, show or race on a track or other location temporarily or permanently closed to all other motor vehicle traffic, whether or not the motor vehicle that caused the bodily injury is participating in the race, contest or show.
- (4) Clause (3)(b) does not apply if a motor vehicle in motion is involved in the accident.

“Bodily injury benefits

20.1 Subject to the other provisions of this Part, the insurer shall pay benefits to a beneficiary regardless of who is responsible for the accident.

“Medical or rehabilitation benefits

21(1) Subject to the maximum benefit amounts mentioned in subsections (3) and (4), an insured is entitled to reimbursement for all medical services authorized by the insurer, including:

- (a) surgical, dental, hospital, ambulance or professional nursing services; and
- (b) any necessary physical therapy, chiropractic treatments, occupational therapy, speech therapy, prosthesis or orthosis.

(2) The amount of a benefit pursuant to subsection (1) is the amount of the expense that the insured is not entitled to be reimbursed for pursuant to any other Act.

(3) The maximum benefit amount payable pursuant to this section is \$20,000 unless the insured sustains a catastrophic injury.

(4) If an insured sustains a catastrophic injury, the maximum benefit amount payable pursuant to this section is \$150,000.

**“DIVISION 2
Weekly Benefits**

“Total disability for employed persons within 104 weeks

22(1) Subject to section 26, an insured is entitled to a weekly benefit if:

- (a) either:
 - (i) the insured is employed; or
 - (ii) the insured was actively engaged in an employment for wages or profit in the 12 months preceding the accident; and
- (b) within 20 days after the accident, the bodily injury sustained in the accident totally and continuously disables the insured from engaging in an employment for which the insured is reasonably suited by education, training or experience.

(2) The insurer shall pay a weekly benefit pursuant to this section for the lesser of:

- (a) the duration of the insured’s total and continuous disability; and
- (b) 104 weeks following the accident.

(3) Subject to subsection (4), the amount of a weekly benefit payable pursuant to this section is \$300.

(4) If an insured has been employed for less than six months in the 12 months preceding the accident, the amount of the weekly benefit payable by the insurer is the lesser of:

- (a) one half of the amount mentioned in subsection (3); and
- (b) the amount obtained when the total earnings of the insured in the 12 months preceding the accident are divided by the number of weeks the insured worked.

“Partial disability for employed persons within 104 weeks

22.1(1) Subject to section 26, an insured is entitled to a weekly benefit pursuant to this section if:

- (a) either:
 - (i) the insured is employed; or
 - (ii) the insured was actively engaged in an employment for wages or profit in the 12 months preceding the accident; and
- (b) within 20 days after the accident, the bodily injury sustained in the accident partially and continuously disables the insured from engaging in one or more of the essential daily duties of:
 - (i) his or her employment; or
 - (ii) an employment for which the insured is reasonably suited by education, training or experience.

(2) The insurer shall pay a weekly benefit pursuant to this section for the lesser of:

- (a) the duration of the insured’s partial and continuous disability; and
- (b) 104 weeks following the accident.

(3) Subject to subsection (4), the amount of a weekly benefit payable pursuant to this section is \$150.

(4) If an insured has been employed for less than six months in the 12 months preceding the accident, the amount of a weekly benefit payable by the insurer is the lesser of:

- (a) one half of the amount mentioned in subsection (3); and
- (b) the amount obtained when the total earnings of the insured in the 12 months preceding the accident are divided by the number of weeks the insured worked.

“Total disability for employed persons after 104 weeks

23(1) Subject to section 26, an insured is entitled to a weekly benefit pursuant to this section if:

- (a) either:
 - (i) the insured was employed at the date of the accident; or
 - (ii) the insured was actively engaged in an employment for wages or profit for any six months or more during the 12 months preceding the date of the accident;
- (b) the insured received a weekly benefit pursuant to section 22 for the first 104 weeks following the accident; and
- (c) the bodily injuries sustained in the accident have permanently and continuously disabled the insured from engaging in any employment for which the insured is reasonably suited by education, training or experience.

(2) The insurer shall pay a weekly benefit pursuant to this section for the duration of the insured's permanent and continuous disability.

(3) The amount of a weekly benefit payable pursuant to this section is \$300.

“Total disability for homemaker within 104 weeks

24(1) An insured is entitled to a weekly benefit pursuant to this section if:

- (a) the insured is a homemaker; and
- (b) within 20 days after the accident, the bodily injury sustained in the accident totally and continuously disables the insured from performing every household duty.

(2) The insurer shall pay a weekly benefit pursuant to this section for the lesser of:

- (a) the duration of the insured's total and continuous disability; and
- (b) 104 weeks following the accident.

(3) The amount of a weekly benefit payable pursuant to this section is \$300.

“Partial disability for homemaker within 104 weeks

24.1(1) An insured is entitled to a weekly benefit pursuant to this section if:

- (a) the insured is a homemaker; and
- (b) within 20 days after the accident, the bodily injury sustained in the accident partially and continuously disables the insured from performing one or more important daily household duties.

(2) The insurer shall pay a weekly benefit pursuant to this section for the lesser of:

- (a) the duration of the insured's partial and continuous disability; and
- (b) 104 weeks following the accident.

(3) The amount of a weekly benefit payable pursuant to this section is \$150.

“Confinement benefit

25(1) An insured is entitled to a weekly benefit pursuant to this section if:

- (a) the insured is not entitled to a weekly benefit pursuant to section 22 or 24; and
- (b) within 20 days after the accident, the bodily injury sustained in the accident:
 - (i) totally and continuously disables the insured; and
 - (ii) pursuant to instructions from a prescribed practitioner, confines the insured to a hospital, bed or wheelchair.

(2) The insurer shall pay a weekly benefit pursuant to this section for the lesser of:

- (a) the duration of the insured's confinement; and
- (b) 52 weeks following the accident.

(3) The amount of a weekly benefit payable pursuant to this section is \$150.

“Limited liability where total benefits exceed money value of the income of an insured

26(1) This section applies if the sum of weekly benefits otherwise payable to an insured pursuant to section 22, 22.1 or 23 and any other accident or disability benefits payable to the insured under a contract of insurance with respect to an accident exceed the insured’s average yearly income in the 12 months preceding the accident.

(2) Notwithstanding sections 22, 22.1 and 23, in the circumstances mentioned in subsection (1), the insurer is only liable pursuant to section 22, 22.1 or 23 to pay a reduced weekly benefit to an insured in the amount RWB as calculated in accordance with the following formula:

$$RWB = \frac{AVWE \times PWB}{OB}$$

where:

AVWE is the insured’s average aggregate weekly earnings in the 12 months preceding the accident;

PWB is the prescribed weekly benefit that would otherwise be payable to the insured pursuant to section 22, 22.1 or 23 but for this section; and

OB is the total benefits payable to the insured with respect to the accident.

(3) If, as the result of applying subsection (2), the reduced weekly benefit received by the insured would be less than the weekly benefit otherwise payable, the insurer shall pay to the insured the positive difference between the weekly benefit and the reduced weekly benefit.

“DIVISION 3

Death and Funeral Benefits

“Weekly death benefits

27(1) In this Division, **‘dependant’**, with respect to an insured, means a child of the insured who is:

(a) under 21 years of age at the date of the accident and includes an unborn child; and

(b) dependent on the insured for the necessities of life.

(2) If an insured dies as a result of an accident, a spouse is entitled to a weekly death benefit in an amount DB calculated in accordance with the following formula:

$$DB = (45\% \times NI)$$

where NI is equivalent to the insured’s weekly net income at the date of the accident, as calculated in the prescribed manner.

(3) The minimum death benefit a spouse is entitled to receive pursuant to this section is \$45,000.

(4) The weekly death benefit payable pursuant to this section is payable until the spouse dies.

(5) Subject to subsection (8), if at the date of the accident the insured had a dependant, the insurer shall pay a weekly death benefit for the care and maintenance of the insured's dependant in the amount DB calculated in accordance with the following formula:

$$DB = (5\% \times NI) \times DC$$

where:

NI is equivalent to the insured's weekly net income at the date of the accident, as calculated in the prescribed manner; and

DC is the number of the insured's dependants.

(6) The insurer shall pay the weekly death benefit set out in subsection (5) to the spouse.

(7) Notwithstanding subsection (6), the insurer may pay the weekly death benefit for the dependant to the Public Guardian and Trustee if:

- (a) the dependant does not reside with the spouse; or
- (b) in the insurer's opinion, the spouse has neglected or abandoned the dependant.

(8) The weekly death benefits mentioned in subsection (5) are payable until whichever of the following occurs first:

- (a) the dependant reaches 21 years of age;
- (b) the dependant dies.

“Weekly death benefits - dependant

27.1(1) If both of a dependant's parents die in an accident, the dependant is entitled to the weekly death benefit mentioned in section 27 for each parent as if the dependant were the spouse of each parent.

(2) If the insured is the sole parent of a dependant, the dependant is entitled to the weekly death benefit mentioned in section 27 as if the dependant were the spouse of the insured.

(3) If, at the date of the accident, the surviving parent of the dependant is not entitled to the weekly death benefit set out in subsection 27(2), the dependant is entitled to the weekly death benefit mentioned in section 27 as if the dependant were the spouse of the insured.

(4) The weekly death benefit mentioned in subsection (1), (2) or (3) is payable only until whichever of the following occurs first:

- (a) the dependant reaches 21 years of age;
- (b) the dependant dies.

(5) If there is more than one dependant, the weekly death benefits mentioned in this section are to be paid in the prescribed manner.

“Capitalization of weekly death benefits

27.2(1) A spouse or a dependant who is entitled to a weekly death benefit pursuant to section 27 or 27.1 may elect to have the weekly death benefit capitalized and, subject to the regulations, paid out as a lump sum.

(2) Subject to the regulations, an election pursuant to subsection (1) must be made within two years after the date of the death of the insured and is not revocable.

(3) The insurer shall undertake the capitalization in the prescribed manner.

“Lump sum death benefit

27.3(1) If an insured dies leaving no spouse or dependant, the insured’s estate is entitled to a lump sum death benefit of \$10,000.

(2) Notwithstanding any other Act or law, if the insured, the insured’s spouse and the insured’s dependant die from injuries sustained in the same accident:

(a) they are all deemed to have died at the same time for the purposes of determining the availability of death benefits pursuant to this Part; and

(b) for the purposes of sections 27 and 27.1, there is deemed to be no spouse or dependant.

“Funeral benefit

27.4 The insured’s estate is entitled to a lump sum benefit in the amount of \$5,000 for the insured’s funeral.

“DIVISION 4**Permanent Impairment Benefits****“Permanent impairment benefits**

28(1) An insured who suffers a permanent impairment as a result of an accident is entitled to a lump sum benefit for the permanent impairment.

(2) Notwithstanding subsection (1), a lump sum benefit is not payable if the insured dies of a cause related to the accident.

(3) If the insured dies of a cause unrelated to an accident and, on the date of his or her death, the insured is suffering a permanent impairment as a result of the accident, the insurer shall:

(a) estimate the amount of the lump sum benefit that it would have awarded to the insured if the insured had not died; and

(b) pay the lump sum benefit to the insured’s estate.

“Evaluation of permanent impairment

28.1(1) The insurer shall evaluate an insured’s permanent impairment as a percentage that is determined on the basis of the prescribed schedule of permanent impairments.

(2) If an insured’s permanent impairment is not listed on the prescribed schedule of permanent impairments, the insurer shall determine a percentage for the permanent impairment using the prescribed schedule as a guide.

“Calculation of lump sum benefit

29(1) If an insured suffers a permanent impairment, the insurer shall calculate the lump sum benefit in the manner set out in this section.

(2) For the purposes of subsection (1), the amount of a lump sum benefit is the amount PI calculated in accordance with the following formula:

$$PI = \$10,000 \times P$$

where P is the percentage determined pursuant to section 28.1.

(3) Notwithstanding subsection (2), if the insured is determined to have suffered a permanent impairment that includes a catastrophic injury, the amount of the lump sum benefit for a permanent impairment payable pursuant to this Division is the amount CPI calculated in accordance with the following formula:

$$CPI = \$130,000 \times P$$

where P is the percentage determined pursuant to section 28.1.

“DIVISION 5 Indexation of Benefits

“Interpretation of Division

30(1) In this Division, ‘**consumer price index**’ means the consumer price index mentioned in subsections (2) to (4).

(2) Subject to subsections (3) and (4), in this Division, the consumer price index is the ‘all-items’ Consumer Price Index for Saskatchewan as published monthly by Statistics Canada.

(3) If no figure for the ‘all-items’ Consumer Price Index for Saskatchewan is published by Statistics Canada for a month, the insurer shall determine a figure for that month in accordance with the regulations.

(4) If, after the day this Part comes into force, Statistics Canada uses a new method to determine the ‘all-items’ Consumer Price Index for Saskatchewan for a particular month and the new method results in a change of more than 1% when compared with the former method, the insurer shall determine a figure in accordance with the regulations.

“Timing of required adjustments

30.1(1) On January 1 of each year, the insurer shall adjust the benefit amounts set out in this Part.

(2) The amounts as adjusted pursuant to subsection (1) must be applied in calculating the amount of any benefit.

“Calculation of adjustment

30.2(1) Subject to section 30.3, if an amount is to be adjusted pursuant to this Division, the adjusted amount is the amount AM calculated in accordance with the following formula:

$$AM = A \times \frac{CPICY}{CPIPY}$$

where:

A is the amount to be adjusted;

CPICY is the consumer price index for the year in which the adjustment is being made; and

CPIPY is the consumer price index for the previous year.

(2) For the purposes of this section, the consumer price index for a year is the average of the consumer price indices for the 12 months preceding October 1 of the previous year.

(3) If the average of the monthly consumer price indices for a year includes more than one decimal, only the first digit is to be retained, and it is to be increased by one unit if the second digit is greater than four.

(4) If the ratio between the consumer price index for the current year and the consumer price index for the previous year includes more than three decimals, only the first three digits are to be retained, and the third digit is to be increased by one unit if the fourth digit is greater than four.

(5) After adjusting pursuant to this section, the insurer shall round the resulting amount to the nearest dollar.

“Cap on adjustments

30.3(1) Subject to subsection (2), if the ratio between the consumer price index for the current year and the consumer price index for the previous year exceeds 1.06:1, the ratio is deemed to be 1.06:1.

(2) When authorized by the regulations, the insurer may use the ratio calculated pursuant to section 30.2 even though the ratio between the consumer price index for the current year and the consumer price index for the previous year exceeds 1.06:1.

“DIVISION 6**General Matters respecting Part II Benefits****“Payment of benefits**

30.4(1) Notwithstanding any other provision in this Part, a beneficiary is not entitled to receive a benefit pursuant to section 22, 22.1, 24, 24.1 or 25 for the first seven days after the accident.

(2) The insurer shall pay a weekly benefit pursuant to section 22, 22.1, 23, 24, 24.1 or 25 to an insured once every 14 days.

(3) The insurer shall pay a weekly death benefit to a spouse or dependant once every 14 days subject to the spouse's or dependant's election to obtain a lump sum benefit.

(4) The insurer may request that a beneficiary provide it with receipts before paying a benefit and, if the insurer makes that request, a beneficiary may receive the benefit only after receipts that are satisfactory to the insurer are submitted.

(5) The insurer shall pay a benefit related to reimbursing expenses to a beneficiary.

(6) If a benefit is payable to a beneficiary, but not paid on or before the day he or she dies, the insurer shall pay the benefit to the beneficiary's estate.

(7) If a beneficiary who is entitled to a benefit has a personal or property guardian appointed or continued pursuant to *The Public Guardian and Trustee Act* or *The Adult Guardianship and Co-decision-making Act* who is authorized to receive the payment, the insurer shall pay the benefit to the personal or property guardian.

(8) Notwithstanding any provision to the contrary, the insurer may, at any time, elect to pay a benefit to the Public Guardian and Trustee if the Public Guardian and Trustee is authorized by law to accept the payment.

“Effect of judgment on benefits

31(1) If a beneficiary is entitled to benefits pursuant to this Part and the beneficiary receives a judgment or settlement for an amount less than the estimated value of the future payment of those benefits:

- (a) the amount of the benefit to be received pursuant to this Part is to be reduced in proportion to the amount the judgment or settlement bears to the estimated value of the future payments; and
- (b) the benefits payable to the beneficiary are to be reduced accordingly.

(2) For the purposes of subsection (1), the estimated value of the future payment of benefits to be received must be based on the present day value of the deferred benefit calculated for the period with respect to which those future payments are authorized or required, as the case may be.

“No attachment

32(1) Subject to section 11.1 and *The Enforcement of Maintenance Orders Act, 1997*, benefits, other than weekly benefits paid pursuant to section 22, 22.1, 23, 24, 24.1 or 25, are exempt from garnishment, seizure, attachment, execution and any other process or claim.

(2) A beneficiary who is entitled to any benefits, other than weekly benefits pursuant to section 22, 22.1, 23, 24, 24.1 or 25, may not assign the benefits to another person, and any purported assignment is void.

“No waiver

33(1) No beneficiary shall agree with any person to waive or forego any of the benefits to which he or she may be entitled pursuant to this Part.

(2) Any agreement purporting to waive or forego any of the benefits to which a person may be entitled pursuant to this Part is void.

“Exemptions - when insurer not to pay benefits pursuant to this Part

34(1) Notwithstanding any other provision of this Part, the insurer is not liable to pay any benefits pursuant to this Part to:

- (a) a person who as a result of an accident is entitled to:
 - (i) compensation pursuant to *The Workers’ Compensation Act, 1979* or any other Act, or any legislation of any other jurisdiction, that relates to the compensation of persons injured in accidents; or
 - (ii) compensation pursuant to the *National Defence Act* (Canada) or the *Royal Canadian Mounted Police Act* (Canada) or any other Act, or any legislation of any other jurisdiction, that provides for compensation of persons injured in accidents;
- (b) a person who is a resident of another province, state or country; or
- (c) a spouse or dependant of a person mentioned in clause (a) or (b).

(2) If an insured is entitled to weekly benefits pursuant to section 22, 22.1 or 23 and the insured becomes entitled to benefits pursuant to the *Employment Insurance Act* (Canada), the insurer is liable only for the amount by which the weekly benefits pursuant to section 22, 22.1 or 23 exceed the benefits actually received by the insured pursuant to the *Employment Insurance Act* (Canada).

(3) In no case is the insurer liable pursuant to subsection (2) to pay more than the amounts set out in those sections.

**“DIVISION 7
Statutory Conditions**

“Statutory conditions

35 Accident benefits provided by this Part are subject to the following statutory conditions:

Prohibitions

- 1** An insured shall not:
 - (a) operate a motor vehicle while under the influence of intoxicating liquor or drugs to such an extent as to be for the time being incapable of the proper control of a motor vehicle;
 - (b) operate a motor vehicle while he or she is not for the time being qualified and authorized by law to drive or operate a motor vehicle;
 - (c) operate a motor vehicle of which he or she is the owner unless the motor vehicle, being a motor vehicle required to be registered under *The Highway Traffic Act*, is designated in an unexpired owner’s certificate;

- (d) operate a motor vehicle of which he or she is not the owner unless he or she believes on reasonable grounds that the motor vehicle, being a motor vehicle required to be registered under *The Highway Traffic Act*, is designated in an unexpired owner's certificate;
- (e) operate a motor vehicle in any race or speed test;
- (f) operate a motor vehicle with the intent to evade a police officer;
- (g) operate a motor vehicle with the intention of causing or attempting to cause bodily injury or property damage;
- (h) permit, suffer, allow or connive at the use or operation of the insured's motor vehicle by any person contrary to conditions (a) to (g).

Proof of claim

- 2(1) Every claimant who seeks a benefit pursuant to this Part has the burden of proving his or her entitlement to benefits.
- (2) Proof of the claim must be made by the claimant, or in the absence of the claimant's ability to make the proof, the claimant's agent.

Notice of claim

- 3(1) A claimant shall give reasonable notice to the insurer of his or her claim not later than two years from the date of the accident.
- (2) Failure to give notice within the time limit set out in subsection (1) does not invalidate a claim pursuant to this Part if it is shown that it was not reasonably practicable to give notice within that time and that the notice was given as soon as was reasonably practicable.
- (3) A claimant shall provide to the insurer:
 - (a) a completed proof of claim form provided by the insurer outlining the circumstances of the accident; and
 - (b) a certificate from a duly qualified medical practitioner indicating the cause and nature of the injuries for which the claim is being made and the duration of the claimant's bodily injury.
- (4) Subject to subsection (5), if a claimant is a minor on the date of the accident on which the claim is based, the claimant must apply for a benefit within two years after the date that the claimant reaches 18 years of age.
- (5) The time limits set out in this section are postponed for a claimant who, by reason of mental disorder, is not competent to manage his or her estate until the claimant:
 - (a) becomes competent to manage his or her estate; or
 - (b) is represented by a personal guardian or property guardian appointed or continued pursuant to *The Public Guardian and Trustee Act* or *The Adult Guardianship and Co-decision-making Act* who is aware of a claim and has the legal capacity to make the claim on behalf of the claimant.

Examination by practitioner

- 4(1) If requested to do so by the insurer, an insured shall undergo an examination by a practitioner chosen by the insured.
- (2) If requested to do so by the insurer, an insured shall undergo an examination by a practitioner chosen by the insurer.
- (3) A practitioner who examines an insured at the request of the insurer shall provide the insurer with a written report on the condition of the insured and on any other related matter requested by the insurer.
- (4) If the insurer obtains a report respecting an examination conducted pursuant to this section, the insurer, at the request of the insured who underwent the examination, shall provide a copy of the report to any practitioner designated by the insured.
- (5) The insurer may request an examination as often as it may reasonably require while a claim pursuant to this Part is pending.
- (6) Subject to the regulations, the insurer shall pay for all reasonable and authorized expenses incurred by the insured to undergo an examination pursuant to this section.
- (7) In the case of the death of an insured, the insurer may request any medical report that is prepared as a result of any autopsy conducted with respect to that death.

Release of information

- 5(1) A claimant shall provide any information, and any authorization necessary to obtain that information, that is requested by the insurer for the purposes of this Part.
- (2) As soon as is practicable after receiving a request from a claimant, the insurer shall release to the claimant, at the claimant's request, all of the insurer's information concerning the claimant and the claimant's claim that the claimant:
 - (a) is entitled by law to receive; and
 - (b) may reasonably require for the purposes of this Part.

Inspection of motor vehicle

- 6(1) The insurer shall be permitted, at any reasonable time, to inspect any motor vehicle designated in an owner's certificate and its equipment.
- (2) If a motor vehicle has an onboard computer or sensing diagnostic module installed in the motor vehicle, the insurer is entitled to examine the contents of the onboard computer or sensing diagnostic module and make a copy of any information contained on the onboard computer or sensing diagnostic module.
- (3) The insurer may use any information collected pursuant to this section to determine a claimant's entitlement to benefits pursuant to this Part.

Claimant to advise of changes

7(1) Every claimant shall notify the insurer without delay of any changes that affect or that might affect:

- (a) his or her right to claim or receive a benefit; or
- (b) the amount of a benefit that he or she is claiming or receiving.

(2) For the purposes of subsection (1), a change includes, but is not limited to, a change in the claimant's medical condition.

Onus on claimant where report required

8 If a claimant is required by sections 68 and 70 of the Act to provide an accident report, the claimant shall comply as required and the onus of proving compliance is on the claimant.

Waiver

9 The insurer is not deemed to have waived any statutory condition pursuant to this Part either in whole or in part unless the waiver is expressed in writing and signed by the insurer.

Limitation of action

10 Any action or proceeding against the insurer for the recovery of a claim pursuant to this Part must be commenced within two years from the date the cause of action arose”.

Section 38 amended

10(1) Subsection 38(1) is amended by striking out “plying” and substituting “travelling”.

(2) Clause 38(3)(a.1) is repealed and the following substituted:

“(a.1) caused by mechanical fracture or breakdown of any part of the vehicle or by rusting, corrosion, freezing or wear and tear, or explosion within the combustion chamber, unless the loss or damage is coincident with other loss or damage that is insured against pursuant to this section”.

Section 39 amended

11(1) Statutory condition 9 set out in section 39 is repealed and the following substituted:

“In case of disagreement

9(1) If the insured and the insurer disagree respecting any of the following questions, they must resolve the disagreement in accordance with this section:

- (a) a question as to the nature and extent of the repairs and replacements required;
- (b) a question as to the adequacy of the repairs and replacements required;
- (c) a question as to the amount payable respecting any loss or damage.

- (2) A determination of a question mentioned in subsection (1) must be made before recovery can be had pursuant to this Part:
 - (a) whether or not the right to recover pursuant to this Part is in dispute; and
 - (b) independently of all other questions.
- (3) The insured and the insurer shall each select one appraiser and advise the other of the appraiser each has chosen.
- (4) For the purposes of subsection (3):
 - (a) the insurer may appoint an employee of the insurer to act as an appraiser for the insurer; or
 - (b) the insured may act as an appraiser on the insured's own behalf.
- (5) The two appraisers appointed pursuant to subsection (3) shall select an independent umpire.
- (6) A judge of the Court of Queen's Bench may appoint an appraiser or an umpire on the application of the insured or the insurer if:
 - (a) either party fails to appoint an appraiser within seven days of being served with a written request to do so by the other party;
 - (b) the appraisers fail to agree on an umpire within 15 days after their appointment; or
 - (c) the person selected as umpire refuses to act or is incapable of acting.
- (7) The two appraisers shall, as the case may be:
 - (a) estimate or appraise the loss or damage stating separately the value of and damage to the vehicle; or
 - (b) determine the adequacy of the repairs and replacements.
- (8) If the appraisers are unable to agree, they shall submit the matter to the umpire.
- (9) An award may be determined by the two appraisers or by one appraiser and the umpire.
- (10) An award pursuant to subsection (9) is deemed to be a final determination of, as the case may be:
 - (a) the amount payable respecting any loss or damage;
 - (b) the nature and extent of the repairs and replacements required; or
 - (c) the adequacy of the repairs and replacements.
- (11) The insurer and the insured shall:
 - (a) pay the cost of the appraiser each has selected; and
 - (b) share equally the costs of the appraisal and the umpire".

(2) Statutory condition 11 set out in section 39 is repealed and the following substituted:

“Inspection of motor vehicles

11(1) The insurer shall be permitted, at all reasonable times, to inspect any motor vehicle designated in an owner’s certificate and its equipment.

(2) If a motor vehicle has an onboard computer or sensing diagnostic module installed in the motor vehicle, the insurer is entitled to examine the contents of the onboard computer or sensing diagnostic module and make a copy of any information contained on the onboard computer or sensing diagnostic module.

(3) The insurer may use any information collected pursuant to this section to determine a claimant’s entitlement to benefits pursuant to this Part”.

New heading to Part IV

12 The heading to Part IV is repealed and the following substituted:

“PART IV
Bodily Injury and Property Damage Liability
 “DIVISION 1
Interpretation of Part”.

New sections 40 to 41.1

13 Sections 40 and 41 are repealed and the following substituted:

“Interpretation of Part

40 In this Part and in section 81:

(a) **‘economic loss’** means any pecuniary loss respecting, arising out of or stemming from bodily injury caused by a motor vehicle arising out of an accident;

(b) **‘non-economic loss’** means a non-pecuniary loss respecting, arising out of or stemming from bodily injury caused by a motor vehicle arising out of an accident.

“DIVISION 2
Limits on Actions and Tort Election

“Actions for bodily injury prohibited

40.1 Notwithstanding any other Act or law but subject to this Part and Part VIII:

(a) no person has any right of action respecting, arising out of or stemming from bodily injuries caused by a motor vehicle arising out of an accident that occurs on or after the day this Part comes into force; and

(b) no action or proceeding lies or may be commenced in any court respecting, arising out of or stemming from bodily injuries caused by a motor vehicle arising out of an accident that occurs on or after the day this Part comes into force.

“Tort election

40.2(1) A Saskatchewan resident may provide the insurer with a tort election that sets out that resident’s intention to:

- (a) elect to obtain coverage pursuant to Part II;
- (b) waive the resident’s right to obtain benefits pursuant to Part VIII; and
- (c) elect to bring an action for loss or damage for bodily injury caused by a motor vehicle arising out of an accident.

(2) Every Saskatchewan resident who wishes to make a tort election shall serve on the insurer a completed tort election form in accordance with section 40.3.

(3) A tort election applies only with respect to accidents that occur after the date the insurer receives the tort election.

(4) Notwithstanding section 40.1 but subject to section 41 of this Act and section 44 of *The Workers’ Compensation Act, 1979*, a tort election received by the insurer entitles the person named in it to bring an action for loss or damage respecting, arising out of or stemming from bodily injury caused by a motor vehicle arising out of an accident.

(5) A tort election received by the insurer is only effective as at the date and time it is received and the tort election remains in effect until:

- (a) it is revoked; or
- (b) the person ceases to be a Saskatchewan resident.

“Rules respecting tort election

40.3(1) A tort election must be:

- (a) in writing; and
- (b) in the form provided by the insurer.

(2) Subject to subsections (3) and (4), a tort election must be made by the person who intends to be bound by the election.

(3) If a person is below the age of majority, a tort election for that person may only be made by his or her legal custodian.

(4) If a person has a personal or property guardian appointed or continued pursuant to *The Public Guardian and Trustee Act* or *The Adult Guardianship and Co-decision-making Act*, a tort election for that person may only be made by his or her personal or property guardian.

(5) A tort election must be served on the insurer:

- (a) by personally delivering the tort election at any office of the insurer; or
- (b) by mailing the tort election by ordinary mail to the head office of the insurer.

(6) Notwithstanding any other law, a tort election that is sent by ordinary mail pursuant to clause (5)(b) must be received by the insurer before it is effective.

“Change in coverage

40.4(1) In this section and in section 81, ‘**change in coverage**’ means the making of any election by a Saskatchewan resident after the first tort election made by that resident.

- (2) Any change in coverage pursuant to this Act must be:
- (a) in writing;
 - (b) in the form provided by the insurer; and
 - (c) accompanied by the prescribed fee.
- (3) A change in coverage is effective as at the date and time it is received by the insurer, and subsections 40.3(2) to (6) apply, with any necessary modification, to a written change in coverage.

“DIVISION 3**General Rules respecting Tort Actions****“Tort actions against Part VIII beneficiaries limited**

41(1) Subject to subsection (2), no action may be brought for bodily injury to any person respecting, arising out of or stemming from bodily injury or damage to property caused by a motor vehicle arising out of an accident against a Saskatchewan resident who:

- (a) is a Part VIII beneficiary; and
- (b) is the owner, operator or passenger of the motor vehicle involved in the accident.

(2) Notwithstanding subsection (1), an action may be brought against a Part VIII beneficiary mentioned in subsection (1) for:

- (a) property damage in excess of any insurance money paid or to be paid to the person claiming against the Part VIII beneficiary pursuant to section 51.1;
- (b) economic loss caused by that Part VIII beneficiary in excess of any benefits or insurance money paid or to be paid to the person claiming against that Part VIII beneficiary pursuant to Part II or section 51.1; and
- (c) non-economic loss caused by that Part VIII beneficiary in excess of any insurance money paid or to be paid to the person claiming against that Part VIII beneficiary pursuant to section 51.1, but only if:
 - (i) the loss is caused by a Part VIII beneficiary operating a motor vehicle who is convicted of an offence pursuant to paragraph 253(a) or (b), subsection 254(5) or subsection 255(2) or (3) of the *Criminal Code*; or
 - (ii) the loss is caused by a Part VIII beneficiary operating a motor vehicle who intentionally caused or attempted to cause bodily injury to another person and, as a result of the operation of the motor vehicle, the operator is convicted of an offence pursuant to section 235, 236, 239, 249, 266, 267, 268 or 269 of the *Criminal Code*.

“Rules respecting tort actions

41.1(1) The following rules apply to an action pursuant to this section and sections 41 and 51.1:

- (a) the rules of negligence and apportionment of liability apply;
- (b) in determining a person’s past and future income loss, the court shall calculate an award based on the person’s actual income loss after deducting any applicable taxes pursuant to *The Income Tax Act, 2000* and the *Income Tax Act* (Canada), any premiums pursuant to the *Employment Insurance Act* (Canada) and any contributions pursuant to the *Canada Pension Plan*;
- (c) subject to clause (b), in determining a person’s past and future income loss, the court shall deduct from any award:
 - (i) all amounts that the person has received or is entitled to receive from any government or agency of government or from any public insurance scheme that lessens the person’s loss; and
 - (ii) all Part II benefits paid and payable pursuant to this Act;
- (d) notwithstanding *The Pre-Judgment Interest Act* or any other Act or law, the court shall not award any interest on that part of the judgment that represents a person’s non-economic loss.

(2) The liability of any person for non-economic loss pursuant to this Part is limited to the positive amount L calculated in accordance with the following formula:

$$L = D - \$5,000$$

where D is the amount awarded by the court for non-economic loss.

(3) Notwithstanding any other Act or law, no government, agency of government or public insurer who is required or liable to pay an amount mentioned in subclause (1)(c)(i) has any right of subrogation to recover that amount.

(4) In an action pursuant to this section, on the application of any party, the court may, in accordance with the regulations, direct that any compensation payable respecting all or any claimed categories of damages be provided for in the form of a structured compensation order.

(5) The court may make a direction pursuant to subsection (4) at any stage in the proceedings.

(6) In any action pursuant to this Part, the court shall, when awarding damages, set out under separate headings:

- (a) the amounts that shall be awarded to any person for economic loss; and
- (b) the amounts that shall be awarded to any person for non-economic loss.

“DIVISION 4
General Matters re Bodily Damage and Property
Damage Liability Insurance”.

Section 42 amended

14(1) Subsection 42(1) is amended by striking out “plying” and substituting “travelling”.

(2) Subsections 42(2) to (5) are repealed and the following substituted:

“(2) The insurer’s liability pursuant to subsection (1) for loss or damage arising out of an accident is limited to \$200,000.

“(3) Subsection (2) applies:

- (a) whether there is one claim or more than one claim arising from the accident; and
- (b) whether or not the loss or damage results:
 - (i) from bodily injury to one or more persons or from loss or damage to property; or
 - (ii) from bodily injury to one or more persons and also from loss or damage to property.

“(4) If, in any one accident, loss or damage results from bodily injury and loss or damage to property:

- (a) any claim arising out of bodily injury shall have priority over claims arising out of loss or damage to property to the extent that \$190,000 exceeds the liability of the insured; and
- (b) any claim arising out of loss or damage to property shall have priority over claims arising out of bodily injury to the extent that \$10,000 exceeds the liability of the insured.

“(5) If in an accident loss or damage results from bodily injury, claims for non-economic loss must be paid in priority over claims for economic loss.

“(6) For the purposes of determining the liability of the insurer pursuant to this Part, a motor vehicle and a trailer or semi-trailer attached to a motor vehicle are deemed to be one motor vehicle.

“(7) For the purposes of this section, **‘attached equipment’** means machinery, apparatus or equipment that is mounted on or attached to the motor vehicle and not required for the safe operation of the motor vehicle on the highway, but does not include machinery, apparatus or equipment that is:

- (a) used for snow or ice removal from a highway or for sweeping, cleaning, sanding or grading streets;
- (b) a side- or rear-mounted, power-operated platform;
- (c) attached to a motor vehicle used for pleasure purposes;

(d) attached to a motor vehicle used as a wrecker, dump truck, garbage truck or forklift; or

(e) attached to a motor vehicle used as a front-end loader or backhoe”.

Section 48 amended

15 Section 48 is amended by repealing statutory condition 6 and substituting the following:

“Inspection of motor vehicles

6(1) The insurer shall be permitted, at any reasonable time, to inspect any motor vehicle designated in an owner’s certificate and its equipment.

(2) If a motor vehicle has an onboard computer or sensing diagnostic module installed in the motor vehicle, the insurer is entitled to examine the contents of the onboard computer or sensing diagnostic module and make a copy of any information contained on the onboard computer or sensing diagnostic module.

(3) The insurer may use any information collected pursuant to this section to determine a claimant’s entitlement to benefits pursuant to this Part”.

Section 51 amended

16 Subsection 51(7) is amended by striking out “*The Snowmobile Act,*” and adding “*The Snowmobile Act* but subject to section 41”.

New section 51.1

17 The following section is added after section 51:

“Remedy against insurer where action against person prohibited

51.1(1) A person may bring an action against the insurer as a nominal defendant either alone or with other defendants alleged to be responsible for the bodily injury or property damage if the person:

(a) has a cause of action against another person arising out of or stemming from bodily injury or damage to property caused by a motor vehicle arising out of an accident; and

(b) is unable to bring an action against the other person mentioned in clause (a) as a result of subsection 41(1) because that other person is a Part VIII beneficiary.

(2) An action pursuant to this section against the insurer as nominal defendant must be commenced within the time limited by section 88 of *The Highway Traffic Act* for bringing an action against an owner or operator of the motor vehicle.

(3) On notification of a claim pursuant to this section, the insurer shall notify all persons on whose behalf the insurer acts as nominal defendant regarding the claim.

(4) If an action is brought against the insurer as nominal defendant, the insurer has the right to:

(a) defend the action in the manner the insurer determines is appropriate; or

(b) settle any claim or claims of any person entitled to commence an action pursuant to this section.

- (5) Subject to section 59, for the purposes of clause (4)(b), the insurer may make any payment that it considers proper in the circumstances.
- (6) No person on whose behalf the insurer acts as nominal defendant shall interfere in any negotiations for settlement or in any legal proceeding but, whenever requested by the insurer, that person shall:
- (a) aid in securing information and evidence and the attendance of any witness; and
 - (b) co-operate with the insurer in any action or proceeding or in the prosecution of any appeal pursuant to this section.
- (7) Notwithstanding any other provision of this Act, if a person on whose behalf the insurer acts as nominal defendant fails to co-operate with the insurer as required by subsection (6), the insurer may:
- (a) terminate that person's benefits pursuant to Part II or VIII, as the case may be; and
 - (b) declare that the person is no longer covered pursuant to Parts III and IV.
- (8) Notwithstanding any provision of this Act, if an amount is paid by the insurer pursuant to this section, the insurer may maintain an action in its name to recover from a Part VIII beneficiary any payment the insurer is required to make for loss or damage to property if:
- (a) the person is operating an uninsured motor vehicle as defined in section 52; or
 - (b) the insured would have a right of action against that person pursuant to section 80".

New section 52

18 Section 52 is repealed and the following substituted:

"Uninsured motor vehicles

52(1) In this section and sections 53 to 59, '**uninsured motor vehicle**' means a motor vehicle with respect to which no amount is payable for bodily injury to persons, or for the loss or damage to property of any person, caused by the use or operation of a motor vehicle in Saskatchewan because of the non-existence of:

- (a) an unexpired owner's certificate;
- (b) a motor vehicle liability policy within the meaning of *The Saskatchewan Insurance Act* respecting the motor vehicle; or
- (c) any insurance policy within the meaning of *The Saskatchewan Insurance Act* respecting the motor vehicle that insures or purports to insure at least to the limits mentioned in section 204 of that Act any of the persons that in the circumstances are legally responsible for the bodily injury to any person or for the loss or damage to property.

(2) Notwithstanding subsection (1), an uninsured motor vehicle does not include:

- (a) a motor vehicle with respect to which there exists proof of financial responsibility given in the manner provided for in clause 60(1)(b) or (c) of *The Vehicle Administration Act*;
- (b) a motor vehicle owned by the Crown in right of Canada; or
- (c) a motor vehicle that is exempted from the obligation to insure pursuant to this Act”.

Section 54 amended

19 The following subsection is added after subsection 54(1):

“(1.1) Notwithstanding subsection (1), an action respecting, arising out of or stemming from bodily injury or property damage caused by a motor vehicle arising out of an accident must be brought pursuant to section 51.1 if the owner or operator of an uninsured motor vehicle is a Part VIII beneficiary”.

Section 58 amended

20(1) Subsection 58(1) is amended by striking out “section 51, 54 or 55” and substituting “section 51, 51.1, 54 or 55”.

(2) Subsection 58(2) is amended by striking out “section 51, 54 or 55” and substituting “section 51, 51.1, 54 or 55”.

(3) Subsection 58(3) is amended by striking out “section 51, 54 or 55” and substituting “section 51, 51.1, 54 or 55”.

(4) Subsection 58(4) is amended by striking out “section 51, 54 or 55” and substituting “section 51, 51.1, 54 or 55”.

(5) Subsection 58(5) is amended by striking out “section 51, 54 or 55” and substituting “section 51, 51.1, 54 or 55”.

(6) Subsection 58(6) is amended by striking out “section 51, 54 or 55” and substituting “section 51, 51.1, 54 or 55”.

Section 59 amended

21(1) Subsection 59(1) is amended by striking out “section 54 or 55” and substituting “section 51.1, 54 or 55”.

(2) Subsection 59(2) is repealed and the following substituted:

“(2) The insurer is not liable to pay pursuant to section 51.1, 54 or 55 more than the total amount of \$200,000, exclusive of costs, for all loss or damage on account of bodily injury to one or more persons or on account of the loss or damage to property arising out of any one accident.

“(2.1) If in any one accident damages result from bodily injury and loss of or damage to property, the claims arising out of the loss or damage to property have priority over the claims arising out of the bodily injury to the extent of \$10,000.

“(2.2) If in an accident loss or damage results from bodily injury, claims for non-economic loss must be paid in priority over claims for economic loss”.

(3) Subsection 59(3) is amended:

- (a) in the portion preceding clause (a) by adding “51.1,” after “under sections”; and**
- (b) by repealing clause (b).**

New sections 66 and 66.1

22 Section 66 is repealed and the following substituted:**“Proof of intoxication**

66(1) For the purposes of this Act, a person is conclusively deemed to be under the influence of alcohol or drugs to the extent the person was incapable for the time being of having proper control of a motor vehicle if the person is convicted of an offence pursuant to:

- (a) section 253, subsection 254(5) or subsection 255(2) or (3) of the *Criminal Code*; or
 - (b) a law of a state of the United States of America that is substantially similar to an offence mentioned in clause (a).
- (2) Subsection (1) applies to a person whether or not the person:
- (a) is a party to an action or proceeding pursuant to this Act;
 - (b) is a witness at the trial; or
 - (c) has first been questioned in an action or proceeding pursuant to this Act as to whether he or she has been convicted of that offence.

“Proof of conviction

66.1 For the purposes of section 66, a certificate purporting to be signed by a judge of the convicting court or other officer having custody of the records of the convicting court certifying that the insured has been convicted of an offence mentioned in section 66 is admissible in evidence as proof, in the absence of evidence to the contrary, of the conviction of the insured without proof of the handwriting or position of the person purporting to have signed the certificate”.

New sections 68 to 71

23 Sections 68 to 71 are repealed and the following substituted:**“Reports of accidents**

68(1) In this section and in sections 69 to 71:

- (a) **‘accident report’** means an accident report that meets the requirements of Part VII of *The Highway Traffic Act*;
- (b) **‘police officer’** means a peace officer as defined in *The Highway Traffic Act*;
- (c) **‘unidentified motor vehicle’** means a motor vehicle:
 - (i) that causes injury or death to a person arising out of physical contact of the motor vehicle with the person or with the motor vehicle of which the person is an occupant; and

- (ii) with respect to which:
 - (A) the names of both the owner and the person in charge of the motor vehicle are not ascertainable;
 - (B) the name of the owner is not ascertainable and the motor vehicle has no person who was in charge of it; or
 - (C) the name of the person in charge of the motor vehicle is not ascertainable and the owner is not liable for the actions of that person.
- (2) In the circumstances mentioned in subsection (3), the person in charge of a motor vehicle that is involved in an accident shall:
 - (a) report the accident to the nearest police officer as soon as is practicable after the accident; and
 - (b) provide the police officer mentioned in clause (a) with any information or written statement concerning the accident that the police officer may reasonably require to complete an accident report.
- (3) The duty to report an accident to a police officer pursuant to subsection (2) applies if the accident:
 - (a) involves bodily injuries or death;
 - (b) involves an unidentified motor vehicle;
 - (c) involves a motor vehicle that was towed from the scene of the accident as a result of the accident; or
 - (d) involves a person in charge of a motor vehicle who was apparently under the influence of alcohol or drugs to such an extent as to be incapable for the time being of having proper control of the motor vehicle.
- (4) If the person in charge of a motor vehicle involved in an accident is physically incapable of making a report required pursuant to subsection (2), another occupant, if any, of that motor vehicle shall make that report.
- (5) Every person who sustained a bodily injury as a result of a motor vehicle accident and who is physically capable of making a report shall make a report in the same manner as that required by the person in charge of a motor vehicle pursuant to subsection (2).
- (6) A police officer who receives a report of a motor vehicle accident shall:
 - (a) secure from the person making the report, or by other inquiries if necessary, any particulars of the accident necessary to complete an accident report;
 - (b) prepare an accident report; and
 - (c) transmit the accident report to the insurer.

- (7) The insurer may require:
- (a) any person involved in an accident or having knowledge of an accident or of any bodily injuries or property damage resulting from an accident to furnish any information that is necessary to complete an accident report; or
 - (b) a police officer to secure any information that is necessary to complete an accident report.
- (8) In a prosecution for a contravention of this section, a certificate of the insurer or the chief, deputy chief or person in charge of the police service or unit responsible for providing police services in the municipality where an accident mentioned in this section occurred that a report has not been filed is admissible as proof, in the absence of evidence to the contrary, of the facts stated in the certificate and of the authority of the person issuing the certificate, without proof of the appointment or signature of the person who completed the certificate.

“Duty of police officer

69(1) A police officer receiving a report of an accident pursuant to section 68 must obtain from the person making the report, and by any other inquiries if necessary, full particulars of the accident including:

- (a) the persons involved;
 - (b) the extent of the bodily injuries or property damage, if any, arising out of the accident; and
 - (c) the purpose for which any vehicle involved in the accident was being used.
- (2) For the purposes of subsection (1), a police officer may request any persons involved in or having knowledge of the accident to furnish any additional information the police officer may require.
- (3) No person to whom a request is made pursuant to subsection (2) shall fail to comply with that request.
- (4) A police officer must make any supplementary reports of the accident that the insurer may consider necessary:
- (a) to complete its records; and
 - (b) to establish as far as possible:
 - (i) the cause of the accident;
 - (ii) the persons responsible for the accident; and
 - (iii) the extent of the bodily injuries and property damage, if any, arising out of the accident.

“Additional reports

70(1) The insurer may request any person involved in an accident, or having knowledge of an accident, to furnish any additional information respecting the accident and to make any supplementary reports of the accident that the insurer considers necessary:

- (a) to complete its records; and
- (b) to establish as far as possible:
 - (i) the cause of the accident;
 - (ii) the persons responsible for the accident; and
 - (iii) the extent of the bodily injuries and property damage, if any, arising out of the accident.

(2) The insurer may direct the manner in which and the time within which a request made pursuant to subsection (1) must be complied with.

(3) No person to whom a request is made pursuant to this section shall fail to comply with that request.

“Limits on public inspection re reports and statements

71(1) A written report or statement made or furnished pursuant to section 68, 69 or 70 is deemed to be made without prejudice and for the information of the insurer.

(2) The insurer shall keep any written report or statement mentioned in subsection (1) confidential and is not required to make any written report or statement available for public inspection.

(3) The fact that any written report or statement has been made or furnished pursuant to section 68, 69 or 70 is admissible in evidence solely to prove compliance with that section, but the written report or statement is not admissible in evidence for any other purpose in any trial arising out of an accident.

(4) Notwithstanding subsections (1) and (2), the insurer may make available to persons engaged in road safety research any information contained in any written report or statement received by it pursuant to section 68, 69 or 70.

(5) Subject to section 9 of *The Vehicle Administration Act*, no person who receives any information pursuant to subsection (4) shall make that information public in a form that would enable any particulars to be identified as being related to any specific person or business”.

Section 78 amended**24 Subsection 78(2) is repealed and the following substituted:**

“(2) Subject to subsections (3) and (4), if an insured suffers a catastrophic injury or dies as a result of an accident, no contravention of any provision of statutory condition 1 set out in section 35 is to defeat or impair any claim made by or with respect to the insured for the benefits provided for in Part II if all other applicable terms and conditions of this Act have been complied with.

“(3) An insured is not entitled to a permanent impairment benefit mentioned in section 28.1 if:

- (a) the insured is more than 50% responsible for an accident; and
- (b) the insured:
 - (i) at the date of the accident:
 - (A) was the operator or had care and control of a motor vehicle involved in the accident; and
 - (B) was under the influence of alcohol or drugs to such an extent that the insured was incapable for the time being of having proper control of the motor vehicle;
 - (ii) was convicted, with respect to the accident, of:
 - (A) an offence pursuant to paragraph 253(a) or (b), subsection 254(5) or subsection 255(2) or (3) of the *Criminal Code*; or
 - (B) an offence pursuant to the law of a state of the United States of America substantially similar to an offence mentioned in paragraph (A); or
 - (iii) at the date of the accident, was the operator of a motor vehicle who:
 - (A) intentionally caused or attempted to cause bodily injury to another person; and
 - (B) is convicted of:
 - (I) an offence set out in section 235, 236, 239, 249, 266, 267, 268 or 269 of the *Criminal Code* as a result of the operation of a motor vehicle; or
 - (II) an offence pursuant to the law of a state of the United States of America substantially similar to an offence mentioned in subparagraph (I).

“(4) An insured is not entitled to a benefit pursuant to section 22, 22.1, 23, 24, 24.1 or 25 if:

- (a) the insured is more than 50% responsible for the accident; and
- (b) the insured:
 - (i) is convicted of an offence listed in paragraph (A) or (B) as a result of the accident and has been convicted of an offence listed in paragraph (A) or (B) on at least one occasion within the five years before the accident:
 - (A) an offence pursuant to paragraph 253(a) or (b), subsection 254(5) or subsection 255(2) or (3) of the *Criminal Code*; or
 - (B) an offence pursuant to the law of a state of the United States of America substantially similar to an offence mentioned in paragraph (A); or

(ii) at the date of the accident, was the operator of a motor vehicle who:

(A) intentionally caused or attempted to cause bodily injury to another person; and

(B) is convicted of:

(I) an offence set out in section 235, 236, 239, 249, 266, 267, 268 or 269 of the *Criminal Code* as a result of the operation of a motor vehicle; or

(II) an offence pursuant to the law of a state of the United States of America substantially similar to an offence mentioned in subparagraph (I)".

Section 79 repealed

25 Section 79 is repealed.

New section 80

26 Section 80 is repealed and the following substituted:

"Subrogation - payments pursuant to Parts II, III and IV

80(1) If the insurer makes any payment pursuant to Part II, III or IV or assumes any liability pursuant to Part II, III or IV, the insurer is subrogated to and deemed to be an assignee of all rights of recovery of the person to whom or on whose behalf or with respect to whom any benefits or insurance money was or is to be paid or provided.

(2) Notwithstanding subsection (1), if the insurer makes any payment pursuant to Part II, III or IV with respect to loss, damage, injury or death caused by the fault of an operator or owner designated in an unexpired operator's certificate or an unexpired owner's certificate, the insurer may bring an action in its own name or join in an action pursuant to this section against that operator or owner only where that operator or owner has forfeited the right to claim any or all payments pursuant to Part II, III or IV by reason of section 78.

(3) If the net amount recovered, whether by action or settlement, is, after deducting the cost of recovery, not sufficient to provide complete indemnity for the loss or damage suffered, the amount remaining is to be divided between the insurer and the insured in proportion to the loss or damage that has been borne by each of them.

(4) If recovery is limited pursuant to this section to the amount paid or provided pursuant to Part II, III or IV, the insurer is entitled to have control of the action and may bring a separate action in its own name to recover the amount paid or provided.

(5) If the interests of the insured in any recovery exceed the amount mentioned in subsection (4):

(a) the insurer may join with the person to whom or on whose behalf or with respect to whom the payment is made to bring one action in the name of the person for recovery of the damages resulting from the loss, damage, injury or death; and

(b) the insured and the person to whom or on whose behalf or with respect to whom the payment is made may agree to any arrangements as to the apportionment of the costs of recovery.

(6) If an action is brought pursuant to subsection (5) and the insurer and insured cannot agree as to all or any of the following matters, either party may apply to the court for the determination of those matters:

(a) the lawyers to be instructed to bring an action in the name of the insured;

(b) the conduct or carriage of the action or any matter relating to the action;

(c) any offer of settlement or apportionment of the offer of settlement, whether an action has been commenced or not;

(d) the acceptance of any money paid into court or the apportionment of that money;

(e) the apportionment of costs;

(f) the launching or prosecution of an appeal.

(7) On an application pursuant to subsection (6), the court may make any order that it considers reasonable having regard to the interests of the insurer and the insured in any recovery in the action or proposed action or in any offer of settlement.

(8) On an application pursuant to subsection (6), the only parties entitled to receive notice and to be heard are the insurer and the insured, and no material or evidence used on the application is admissible in any legal proceedings brought by or against the insurer or the insured.

(9) Subject to subsection (6), if a person is notified that the insurer has made or is making a claim or commencing a proceeding pursuant to subsections (4) and (5):

(a) that person shall not negotiate settlement of any claim to the prejudice of the insurer except at that person's own cost; and

(b) if that person has received benefits or insurance money, that person:

(i) shall not interfere in any negotiations for settlement or in any legal proceeding but whenever requested to do so by the insurer shall aid in securing information and evidence and the attendance of any witness; and

(ii) shall co-operate with the insurer in any action or proceeding or in the prosecution of any appeal.

(10) A settlement or release given before or after an action is brought pursuant to subsection (6) does not bar the rights of the insurer or the insured, as the case may be, unless they have concurred in the settlement or release.

(11) If the insurer is entitled to bring or join in an action against any person pursuant to this section, in assessing the damages, no account shall be taken for the benefit of that person of the benefits or insurance money paid or payable pursuant to Part II, III or IV with respect to the loss, damage, injury or death caused by the fault of that person whether or not the right assigned to the insurer and to which the insurer is subrogated arises pursuant to *The Fatal Accidents Act* or otherwise”.

Section 81 amended

27 Section 81 is amended:

- (a) by renumbering it as subsection 81(1);**
- (b) by repealing clause (1)(b) and substituting the following:**
 - “(b) defining, enlarging or restricting the meaning of any word or expression used in this Act”;
- (c) by adding the following clauses after clause (1)(d):**
 - “(d.1) prescribing offences as chargeable incidents for the purposes of paragraphs 6(1)(a)(ii)(A) and (E);
 - “(d.2) prescribing the manner in which chargeable incidents are to be recorded against a driver;
 - “(d.3) prescribing the manner in which a driver’s safety rating is to be determined”;
- (d) by repealing clause (1)(e) and substituting the following:**
 - “(e) respecting the amount of the surcharge that a driver is required to pay pursuant to this Act and providing for variations in the amount of the surcharge depending on the driver’s safety rating;
 - “(e.1) respecting the amount of the discount that a driver is entitled to receive pursuant to this Act and providing for variations in the discount based on the driver’s safety rating;
 - “(e.2) respecting the type of motor vehicles or classes of motor vehicles that qualify for a discount;
 - “(e.3) respecting the time and manner in which a surcharge is required to be paid;
 - “(e.4) classifying motor vehicles for the purposes of this Act and the regulations based on any criteria that the Lieutenant Governor in Council considers appropriate, including classifying motor vehicles according to their ownership;
 - “(e.5) respecting the types of motor vehicles or classes of motor vehicles that are subject to a declaration made pursuant to section 8;
 - “(e.6) respecting the amount of the discount from the basic premium that an owner of a motor vehicle may receive pursuant to a declaration made pursuant to section 8;
 - “(e.7) respecting the amount of any addition to the basic premium that may be required to be paid pursuant to a declaration made pursuant to section 8”;

(e) by repealing clause (1)(h) and substituting the following:

“(h) respecting the fee to be paid pursuant to subsection 7.2(4) or section 10.1”;

(f) by adding the following clauses after clause (1)(w):

“(x) respecting the procedures applicable to, and the proof required for, claims for compensation pursuant to Part II;

“(y) respecting the form and content of any proof of loss required for the purposes of Part II;

“(z) defining catastrophic injuries for the purposes of Part II;

“(aa) prescribing practitioners for the purposes of Parts II to VII;

“(bb) prescribing a motor vehicle or class of motor vehicles for the purposes of subclause 20(3)(b)(vii);

“(cc) respecting the weekly benefits payable pursuant to sections 22, 22.1, 23, 24, 24.1 and 25;

“(dd) respecting the medical and rehabilitation benefits payable pursuant to section 21;

“(ee) prescribing the maximum yearly insurable earnings for which weekly death benefits will be provided pursuant to section 27;

“(ff) respecting the calculation of the insured’s net income pursuant to section 27;

“(gg) respecting the manner of paying a death benefit for the purposes of subsection 27.1(5);

“(hh) respecting the capitalization pursuant to section 27.2;

“(ii) respecting the establishment of a schedule of permanent impairment and the payment of a permanent impairment benefit pursuant to sections 28, 28.1 and 29;

“(jj) respecting the reimbursement of costs for medical reports pursuant to statutory condition 4 set out in section 35;

“(kk) prescribing any fees with respect to a change in coverage pursuant to section 40.4;

“(ll) respecting structured compensation orders pursuant to section 41.1;

“(mm) respecting any other matter the Lieutenant Governor in Council considers necessary to carry out the intent of this Act”; **and**

(g) by adding the following subsections after subsection (1):

“(2) For the purposes of clause (1)(ii), the Lieutenant Governor in Council may:

(a) adopt, or authorize the insurer to adopt, by reference any specifications, standards or codes as amended from time to time or otherwise;

(b) amend, or authorize the insurer to amend, for the purposes of this Act any specifications, standards or codes adopted pursuant to clause (a); and

(c) require compliance with any specifications, standards or codes adopted pursuant to clause (a).

(3) Notwithstanding any other Act or law, any regulations made pursuant to this section may be made retroactive to a day not earlier than July 1, 2002”.

New sections 86.1 and 86.2**28 The following sections are added after section 86:****“Immunity**

86.1 No action lies or shall be instituted against any director, officer, employee or agent of the insurer, a licence issuer or any employee of the office of the licence issuer, where the person is acting pursuant to the authority of this Act or the regulations, for any loss or damage suffered by any person by reason of anything in good faith done, caused or permitted or authorized to be done, attempted to be done or omitted to be done, by any one or more of them pursuant to or in the exercise or supposed exercise of any power conferred by this Act or the regulations or in the carrying out or supposed carrying out of any duty imposed by this Act or the regulations, including providing advice or instruction to an individual concerning the available options with respect to insurance coverage pursuant to this Act.

“Offence – general

86.2 Every person who contravenes any provision of this Act or the regulations is guilty of an offence and liable on summary conviction to a fine of not more than \$1,000”.

Section 91 amended**29 Subsection 91(2) is amended by repealing clause (d) and substituting the following:**

“(d) all costs and operating expenses incurred in the establishment, operation and staffing of the Automobile Injury Appeal Commission pursuant to Part VIII; and

“(e) any expenditure in addition to those mentioned in clauses (a) to (d) that the insurer is authorized to make pursuant to this Act”.

Part VIII repealed

30(1) Part VIII is repealed and the following substituted:

“PART VIII
Bodily Injury Benefits (No Fault)

“DIVISION 1
Interpretation of Part

“Interpretation of Part

100 In this Part:

- (a) **‘current studies’** means studies that are part of a program of studies offered by an educational institution at the elementary, secondary or post-secondary level to which, at the date of an accident, a student has been admitted;
- (b) **‘dependant’**, with respect to an insured, means:
 - (i) a child of the insured who is under 21 years of age at the date of an accident and includes a child of the insured born after the accident or the death of the insured; or
 - (ii) any person who would qualify for a tax credit pursuant to section 118.3 of the *Income Tax Act* (Canada) for a mental or physical impairment and who is dependent on the insured for the necessities of life at the date of the accident;
- (c) **‘educational institution’** means a prescribed educational institution or a member of a prescribed class of educational institutions;
- (d) **‘elementary level’** means kindergarten, the Elementary Level and grades 6 to 8 of the Middle Level as those levels are determined pursuant to *The Education Act, 1995*;
- (e) **‘income replacement benefit’** means an income replacement benefit payable pursuant to Division 4;
- (f) **‘industrial average wage’** means the industrial average wage as calculated in the manner set out in section 137;
- (g) **‘maximum yearly insurable earnings’** means the maximum yearly insurable earnings calculated pursuant to section 136;
- (h) **‘net income’** means net income calculated pursuant to section 139;
- (i) **‘post-secondary institution’** means any educational institution that is not administered pursuant to *The Education Act, 1995*;
- (j) **‘primary employment’** means primary employment as determined in the regulations;
- (k) **‘relapse’** means the recurrence of a disabling condition directly related to an accident after an interval of improvement;

- (l) **'school year'** means:
 - (i) with respect to the elementary and secondary levels, the period commencing on July 1 of one year and ending on June 30 of the following year; or
 - (ii) with respect to the post-secondary level, the period commencing on September 1 of one year and ending on August 31 of the following year;
- (m) **'seasonal employment'** means recurring employment with periods of unemployment or lay-off over a 12-month period either:
 - (i) with one employer; or
 - (ii) at one type of employment;
- (n) **'secondary level'** means grade 9 of the Middle Level and grades 10, 11 and 12 of the Secondary Level as those levels are determined pursuant to *The Education Act, 1995*;
- (o) **'specialized equipment'** means prescribed specialized equipment;
- (p) **'student'** means an insured who, at the date of an accident:
 - (i) is under 16 years of age; or
 - (ii) attends an elementary, secondary or post-secondary educational institution on a full-time basis;
- (q) **'yearly employment income'**, with respect to an insured, means the yearly employment income of the insured that the insurer uses to determine benefits pursuant to Division 4.

“DIVISION 2

Application of Part VIII and Bodily Injury Benefits

“Application of Part

101(1) Notwithstanding any other provision of this Part or any other Act or law but subject to sections 222 and 223, this Part applies only to accidents that occur on or after the date that this Part comes into force.

(2) Notwithstanding subsection (1), this Part does not apply to a bodily injury caused by a motor vehicle arising out of an accident if the bodily injury:

- (a) is caused while the motor vehicle is not in motion;
- (b) subject to subsection (3), is caused:
 - (i) by, or by the use of, a device that can be operated independently of the motor vehicle and that is mounted on or attached to the motor vehicle;
 - (ii) by a self-propelled agricultural implement within the meaning of *The Highway Traffic Act*;

- (iii) by a wheelchair as defined in *The Highway Traffic Act*;
 - (iv) by a special mobile machine as defined in *The Highway Traffic Act*;
 - (v) by a snowmobile as defined in *The Snowmobile Act*;
 - (vi) by an all terrain vehicle as defined in *The All Terrain Vehicles Act*; or
 - (vii) by any other prescribed vehicle;
- (c) is caused by the autonomous act of an animal that is part of the motor vehicle's load;
- (d) is caused by an action performed by the insured in connection with the maintenance, repair, alteration or improvement of the motor vehicle;
- (e) is caused while putting a load on or taking a load off the motor vehicle; or
- (f) is caused as the result of a motor vehicle contest, show or race on a track or other location temporarily or permanently closed to all other vehicle traffic, whether or not the motor vehicle that caused the bodily injury is participating in the race, contest or show.
- (3) Clause (2)(b) does not apply if a motor vehicle in motion is involved in the accident.

“Actions respecting bodily injuries prohibited

102 Notwithstanding any other Part of this Act or any other Act or law, but subject to the other provisions of this Part:

- (a) no person has a right of action respecting, arising out of or stemming from bodily injuries caused by a motor vehicle arising out of an accident that occurs on or after the day this Part comes into force;
- (b) no action or proceeding lies or may be instituted in any court respecting, arising out of or stemming from bodily injuries caused by a motor vehicle arising out of an accident that occurs on or after the day this Part comes into force; and
- (c) the right to benefits stands in lieu of all rights of action that a person is or may be entitled to respecting, arising out of or stemming from bodily injuries caused by a motor vehicle arising out of an accident that occurs on or after the day this Part comes into force.

“Tort action for economic loss**103(1)** In this Part:

- (a) **‘economic loss’** means the following losses resulting from bodily injury caused by a motor vehicle that arise out of an accident:
- (i) in the case of an insured who is entitled to a benefit pursuant to Division 4:
 - (A) any past or future income loss suffered by the insured in excess of the yearly employment income attributable to the insured pursuant to Division 4; or
 - (B) if the insured receives a benefit pursuant to section 117, 118, 119 or 120, any past or future income loss suffered by the insured in excess of the benefit provided;
 - (ii) in the case of an insured who dies as a result of an accident, any past income loss or funeral expenses suffered by the insured’s surviving spouse or any dependant in excess of the benefits provided pursuant to Division 5;
 - (iii) in the case of an insured who is entitled to any benefit pursuant to Divisions 3 and 7, any past and future loss suffered by the insured in excess of the benefits to which the insured is entitled;
 - (iv) in the case of an insured who is entitled to compensation for loss of earnings pursuant to *The Workers’ Compensation Act, 1979* or any other Act, or any legislation of any other jurisdiction, that relates to the compensation of individuals injured in accidents:
 - (A) any past or future income loss suffered by the insured in excess of the benefits paid pursuant to sections 38 and 38.1 of *The Workers’ Compensation Act, 1979*, section 207 of this Act or similar provisions in any other Act, or any legislation of any other jurisdiction, that relate to the compensation for income loss of individuals injured in accidents;
 - (B) any past and future loss suffered by the insured’s surviving spouse or dependant in excess of the benefits paid pursuant to sections 82, 83, 85, 87, 88 and 89 of *The Workers’ Compensation Act, 1979*, section 207 of this Act or similar provisions in any other Act, or any legislation of any other jurisdiction, that relate to the compensation of individuals for the death of an individual in an accident; or
 - (C) any past and future loss suffered by the insured in excess of the benefits paid pursuant to sections 106, 108, 113 and 115 of *The Workers’ Compensation Act, 1979* or similar provisions in any other Act, or any legislation of any other jurisdiction, that relate to the compensation for medical aid of individuals injured in accidents;
- (b) **‘insured’** includes any prescribed person or class of prescribed persons.

- (2) Notwithstanding section 40.1 of this Act, but subject to section 44 of *The Workers' Compensation Act, 1979*, an action may be brought in the Court of Queen's Bench to recover any damages of the insured or of the insured's surviving spouse or dependant for economic losses.
- (3) The following rules apply in an action pursuant to this section:
- (a) the rules of negligence and apportionment of liability apply;
 - (b) in determining economic loss pursuant to subclause (1)(a)(i) or paragraph (1)(a)(iv)(A), the court:
 - (i) shall calculate any award based on the insured's past or future income loss after deducting any applicable taxes pursuant to *The Income Tax Act, 2000* and the *Income Tax Act (Canada)*, any premiums pursuant to the *Employment Insurance Act (Canada)* and any contributions pursuant to the *Canada Pension Plan*; and
 - (ii) shall not award any amount for income loss for the first seven days after the accident;
 - (c) subject to clause (d), in determining an insured's or insured's surviving spouse's or dependant's economic loss, the court shall deduct from any award all amounts the insured or the surviving spouse or dependant has received or is entitled to receive from any government or agency of government, from any public or private insurance scheme or from any other scheme that lessens the economic loss;
 - (d) in determining economic loss pursuant to subclause (1)(a)(ii) or paragraph (1)(a)(iv)(B), the court shall not deduct from any award any amounts the insured's surviving spouse or dependant has received or is entitled to receive from a contract of life insurance as defined in *The Saskatchewan Insurance Act*.
- (4) The deductions mentioned in subclause (3)(b)(i) are to be calculated using the insured's total income at the date of the accident and not the portion of income representing the past or future income loss.
- (5) Notwithstanding any other Act or law, no government, agency of any government, public or private insurer or other person who is required or liable to pay an amount mentioned in clause (3)(c) has any right of subrogation to recover that amount.
- (6) In an action pursuant to this section, on the application of any party, the court may, in accordance with the regulations, direct that any compensation payable respecting all or any claimed categories of damages be provided for in the form of a structured compensation order.
- (7) The court may make a direction pursuant to subsection (6) at any stage in the proceedings.

“Tort action for non-economic loss**104(1)** In this section:

- (a) **‘insured’** includes any prescribed person or class of persons;
- (b) **‘non-economic loss’** means a non-pecuniary loss respecting, arising out of or stemming from bodily injury caused by a motor vehicle arising out of an accident;
- (c) **‘third party’** means:
 - (i) a motor vehicle manufacturer;
 - (ii) a maker or supplier of motor vehicle parts;
 - (iii) a person engaged in the business of selling motor vehicles;
 - (iv) a person engaged in the business of or whose business includes a motor vehicle garage, repair shop or service station;
 - (v) the holder of a restaurant permit or a tavern permit issued pursuant to *The Alcohol Control Regulations, 1994* authorizing the permit holder to deal in beverage alcohol; or
 - (vi) any other prescribed person or member of a prescribed class of persons.

(2) Notwithstanding section 40.1 of this Act, but subject to subsection (3) and section 44 of *The Workers’ Compensation Act, 1979*, an insured who is entitled to a benefit pursuant to this Part may bring an action for damages in the Court of Queen’s Bench to recover a non-economic loss:

- (a) against the operator of a motor vehicle if:
 - (i) the loss is caused by a motor vehicle and, as a result of the operation of the motor vehicle, the operator is convicted of an offence pursuant to paragraph 253(a) or (b), subsection 254(5) or subsection 255(2) or (3) of the *Criminal Code*; or
 - (ii) the loss is caused by a motor vehicle and:
 - (A) the operator of the motor vehicle intentionally caused or attempted to cause bodily injury to another person; and
 - (B) as a result of the operation of the motor vehicle, the operator is convicted of an offence pursuant to section 235, 236, 239, 249, 266, 267, 268 or 269 of the *Criminal Code*; or
- (b) subject to subsections (3) and (4) and to the regulations, against a third party if the loss is caused by, contributed to, or exacerbated by the acts or omissions of the third party.

(3) For the purposes of clause (2)(b):

- (a) a motor vehicle manufacturer is liable only with respect to its business activities and role in manufacturing motor vehicles;
- (b) a maker or supplier of motor vehicle parts is liable only with respect to its business activities and role in making or supplying motor vehicle parts;

(c) a person engaged in the business of selling motor vehicles is liable only with respect to its business activities;

(d) a person engaged in the business of or whose business includes a motor vehicle garage, repair shop or service station is liable only with respect to its business activities and role in repairing and servicing motor vehicles; and

(e) the holder of a restaurant permit or tavern permit issued pursuant to *The Alcohol Control Regulations, 1994* authorizing the permit holder to deal in beverage alcohol is liable only with respect to its business activities and role in supplying beverage alcohol.

(4) A third party is not liable pursuant to this section only by reason of the fact that a motor vehicle owned by the third party caused or contributed to the accident.

(5) Notwithstanding any Act or law, an insured entitled to bring an action pursuant to subsection (2) is only entitled to recover that portion of his or her non-economic loss that is caused by or attributable to those operators or third parties identified in clauses (2)(a) and (b).

(6) Notwithstanding *The Pre-Judgment Interest Act* or any other Act or law, the court shall not award any interest on that part of the judgment that represents a person's non-economic loss.

“Subrogation for non-economic loss

105(1) If the insurer makes a payment pursuant to section 104 with respect to a non-economic loss for damages or bodily injury, the insurer is subrogated to and deemed to be an assignee of the person to whom or on whose behalf or with respect to whom benefits or insurance money is to be paid or provided.

(2) The insurer may bring an action in its own name for recovery of the benefits or insurance money paid for the damages sustained.

(3) An action may be brought against any person at fault whether or not that person is a Saskatchewan resident.

“Bodily injury benefits

106 Subject to this Part, the insurer shall pay benefits to a beneficiary regardless of who is responsible for the accident.

“No benefits for suicide

107(1) No benefits are payable to the insured or insured's surviving spouse or dependant if the insured commits suicide or attempts to commit suicide with a motor vehicle.

(2) An insured or insured's surviving spouse or dependant who disagrees with a decision of the insurer pursuant to subsection (1) may appeal that decision to the Court of Queen's Bench, in the prescribed manner, within 180 days after receiving the insurer's written decision.

“Benefits for Saskatchewan residents

108(1) Subject to this Part, an insured who is resident in Saskatchewan at the date of the accident, and any insured’s surviving spouse or dependant, is entitled to benefits if the accident occurs in Canada or the United States of America or on a vessel travelling between ports of those countries.

(2) If a motor vehicle registered in Saskatchewan is involved in an accident in Saskatchewan, the owner, the operator and any passenger in the motor vehicle are deemed to be resident in Saskatchewan.

“Benefits for non-residents

109(1) Subject to this Part, a person injured in an accident that occurs in Saskatchewan who is not resident in Saskatchewan, and any surviving spouse or dependant of that person, is entitled to benefits:

(a) in accordance with any agreement between the insurer and a government or an agency of the government of the place of residence of the person injured; or

(b) if no agreement exists, to the extent that the insurer determines that the person injured is not responsible for the accident.

(2) A person injured or any surviving spouse or dependant of that person who disagrees with a decision of the insurer pursuant to clause (1)(b) may appeal that decision to the Court of Queen’s Bench, in the prescribed manner, within 180 days after receiving the insurer’s written decision.

“Accidents outside Saskatchewan

110 If an insured or insured’s surviving spouse or dependant is entitled to benefits respecting an accident that occurred outside Saskatchewan, the insurer is subrogated to that insured’s or insured’s surviving spouse’s or dependant’s rights and is entitled to recover the amount of those benefits from:

(a) any person who is not resident in Saskatchewan and who is responsible for the accident pursuant to the law of the place where the accident occurred; or

(b) any other person who is liable to pay compensation for bodily injuries caused by a person described in clause (a).

“Subrogation re accidents in Saskatchewan

111(1) Subject to section 105, if an insured or insured’s surviving spouse or dependant is entitled to benefits pursuant to this Act respecting an accident, the insurer has the right to recover the amount of the benefits from:

(a) any person who is not resident in Saskatchewan and who is responsible for the accident, to the extent that he or she is responsible for the accident; and

(b) any other person who is liable to pay compensation for bodily injury caused by the person described in clause (a).

(2) An action pursuant to this section is to be commenced within two years after the day on which the insurer makes the first benefit payment to the insured or to the insured’s surviving spouse or dependant.

**“DIVISION 3
Rehabilitation**

“Rehabilitation

112(1) In this section, **‘rehabilitation’** includes any or all of the following measures, programs and treatments that the insurer considers necessary or advisable to contribute to the rehabilitation of an insured, to lessen the insured’s disability caused by the accident and to facilitate the insured’s recovery from the accident:

- (a) physical and acquired brain injury programs and treatment;
- (b) occupational and vocational training and programs;
- (c) alterations to an insured’s residence;
- (d) modification or purchase of a motor vehicle for an insured;
- (e) purchase of special equipment for an insured;
- (f) any additional prescribed measure, program or treatment.

(2) Subject to the regulations, the insurer may take any measure it considers necessary or advisable to contribute to the rehabilitation of an insured, to lessen a disability resulting from bodily injury and to facilitate the insured’s recovery from the accident.

(3) The total combined maximum benefits payable to an insured pursuant to this Division and Division 7 is \$5,000,000 for each accident in which a person suffers bodily injury.

**“DIVISION 4
Income Replacement Benefits**

“Income replacement benefit

113(1) This section does not apply to a student.

(2) An insured is entitled to an income replacement benefit if, as a result of an accident, the insured:

- (a) is unable to continue an employment held by the insured at the date of the accident;
- (b) is unable to hold an employment he or she would have held in the first 180-day period following the accident if the accident had not occurred; or
- (c) is deprived of benefits pursuant to the *Employment Insurance Act* (Canada) or any other prescribed benefits to which he or she was entitled at the date of the accident.

(3) The insurer shall calculate the income replacement benefit for the employment that the insured is unable to continue on the following basis:

(a) if the insured holds employment in the employ of another, the yearly employment income of the insured calculated on the basis of the income the insured earned or would have earned from all employments the insured held or would have held but for the accident in the first 180-day period after the accident;

(b) subject to the regulations, if the insured holds an employment as a self-employed earner, the greater of:

(i) the yearly employment income determined in accordance with the regulations for an employment of the same class as the primary employment the insured held or would have held but for the accident in the first 180-day period after the accident; and

(ii) the yearly employment income the insured earned or would have earned from all his or her employments held at the date of the accident; or

(c) subject to the regulations, any benefits the insured would have received from the *Employment Insurance Act* (Canada) or any other prescribed benefits in the first 180-day period after the accident.

(4) On and after the 181st day after the accident, an insured is entitled to an income replacement benefit if the insured is unable to hold employment he or she held or would have held but for the accident.

(5) An income replacement benefit pursuant to subsection (4) is to be the greatest of:

(a) an income replacement benefit calculated on the basis of the yearly employment income attributed to the insured in the first 180-day period after the accident;

(b) an income replacement benefit calculated on the basis of the average employment income the insured earned in the two years before the accident as set out in the regulations, including any benefits received pursuant to the *Employment Insurance Act* (Canada), any benefits received under an employment disability plan, and any benefits received pursuant to *The Workers' Compensation Act, 1979* or similar provisions in any other Act, or any legislation of any other jurisdiction, that relate to the compensation of individuals injured in accidents; and

(c) an income replacement benefit calculated on the basis of a yearly employment income determined on the basis of a 40-hour work week paid on the basis of the minimum wage established pursuant to *The Labour Standards Act*.

(6) Notwithstanding subsection (5), if the insured held or would have held a seasonal employment at the date of the accident, the income replacement benefit pursuant to subsection (4) is the greater of:

(a) an income replacement benefit calculated on the basis of the average employment income the insured earned in the two years before the accident as set out in the regulations, including any benefits received pursuant to the *Employment Insurance Act* (Canada), any benefits received pursuant to an employment disability plan, and any benefits received pursuant to *The Workers' Compensation Act, 1979* or similar provisions in any other Act, or any legislation of any other jurisdiction, that relate to the compensation of individuals injured in accidents; and

(b) an income replacement benefit calculated on the basis of a yearly employment income determined on the basis of a 40-hour work week paid on the basis of the minimum wage established pursuant to *The Labour Standards Act*.

(7) Notwithstanding subsections (5) and (6), if the insured held or would have held a seasonal employment at the date of the accident but the insured did not hold the employment held at the date of the accident in the two years before the accident, the income replacement benefit pursuant to subsection (4) is the greater of:

(a) the yearly employment income as determined in accordance with the regulations for an employment of the same class as the seasonal employment that the insured held or would have held but for the accident; and

(b) an income replacement benefit calculated on the basis of a yearly employment income determined on the basis of a 40-hour work week paid on the basis of the minimum wage established pursuant to *The Labour Standards Act*.

(8) Notwithstanding subsection (4), if on the 180th day and subsequent days following the accident the insured is entitled to an income replacement benefit for the first time:

(a) the insured is entitled to an income replacement benefit calculated in the manner set out in subsection (3); and

(b) the insured's income replacement benefit is not to be adjusted pursuant to subsection (4) until 180 days after the date the insured first became entitled to receive an income replacement benefit.

(9) An insured is not entitled to an income replacement benefit if the insured elects to obtain a caregiver benefit pursuant to section 119.

“When more remunerative employment to be used

114 Subject to the regulations, if the insurer is satisfied that the insured held more remunerative employment in the year before the accident and would have held that more remunerative employment at the date of the accident but for special circumstances, the insurer shall calculate an insured’s income replacement benefit pursuant to section 113 using the yearly employment income that the insured earned in the year before the accident, excluding any benefits paid to the insured pursuant to the *Employment Insurance Act* (Canada), as the insured’s yearly employment income.

“Income replacement benefit for catastrophic impairment

115(1) This section does not apply to a student.

(2) Notwithstanding any other provision of this Division, if an insured suffers a catastrophic injury as a result of the accident, the insured is entitled to the greater of:

(a) an income replacement benefit calculated in the manner set out in sections 113 and 114; and

(b) an income replacement benefit calculated on the basis of a yearly employment income equal to a yearly average computed on the basis of the industrial average wage for the 12 months before July 1 of the year preceding the accident.

“SUBSTITUTE WORKER ELECTION**“Substitute worker election**

116(1) Subject to the regulations, if an insured is self-employed at the date of an accident and is entitled to an income replacement benefit pursuant to section 113, 114, 122 or 123, the insured may elect to receive a benefit to hire a substitute worker.

(2) Subject to subsection (4), an insured may elect to receive a substitute worker benefit for each employment for which the insured would be considered self-employed.

(3) Subject to subsection (4), if an insured elects to receive a substitute worker benefit for an employment, the insured is not entitled to an income replacement benefit for that employment.

(4) Subject to subsection (5) and the regulations, the insured may, at any time:

(a) revoke an election to receive an income replacement benefit and elect to receive a substitute worker benefit; or

(b) revoke an election to receive a substitute worker benefit and elect to receive an income replacement benefit.

(5) An election to change benefits pursuant to subsection (4) may be made only once.

(6) Notwithstanding subsection (5), on the sale, lease, dissolution, termination or other disposition of the business operation carried on by the insured at the date of the accident:

(a) the insured's election to receive a substitute worker benefit is deemed to be revoked; and

(b) if the insured is otherwise entitled pursuant to this Part to receive an income replacement benefit, the insured is deemed to have elected to receive that income replacement benefit.

“Substitute worker benefit

117(1) This section applies if an insured elects pursuant to section 116 to receive a substitute worker benefit to employ a person to perform the duties that the insured is unable to perform as a result of the accident.

(2) The maximum amount of the substitute worker benefit for all employments for which the insured would be considered self-employed at the date of the accident is \$631 per week.

(3) Notwithstanding subsection (2) but subject to subsection (4), instead of paying a substitute worker benefit weekly, the insurer shall pay the actual and reasonable expenses incurred by the insured to hire as many substitute workers as are necessary to perform the duties the insured would have performed but for the accident if, in the opinion of the insurer:

(a) the insured's employment has regular duties that are of a temporary nature that require the insured to work extended hours over a short term; or

(b) the insured's employment requires the use of specialized equipment or education.

(4) The maximum benefit for a substitute worker benefit paid pursuant to subsection (3) is \$32,812 per year.

(5) The insurer shall:

(a) adjust the amount of the substitute worker benefit when the insured is able to resume some of the employment duties the insured carried out in the insured's employment at the date of the accident; and

(b) terminate the amount of the substitute worker benefit when the insured is substantially able to resume the employment duties the insured carried out in the insured's employment at the date of the accident.

(6) In addition to a substitute worker benefit, the insurer shall reimburse the insured for any actual expenses required by law that the insured paid as the substitute worker's employer pursuant to the *Employment Insurance Act* (Canada) and the *Canada Pension Plan* on behalf of the substitute worker.

- (7) Notwithstanding any provision of this Part to the contrary, if an insured receives a substitute worker benefit:
- (a) the insurer shall reduce the substitute worker benefit in accordance with section 126 and, for that purpose, that section applies, with any necessary modification, to the substitute worker benefit; and
 - (b) the insurer shall:
 - (i) determine an employment for that insured pursuant to section 132 or 133, and those sections apply, with any necessary modification, to the insured; and
 - (ii) reduce the insured's benefit mentioned in subclause (i) in accordance with section 135, and that section applies, with any necessary modification, to the reduction of that benefit.

“FAMILY ENTERPRISE BENEFITS

“Family enterprise benefit

- 118(1)** An insured is entitled to a benefit pursuant to this section if the insured:
- (a) was working without remuneration in a family enterprise at the date of the accident; and
 - (b) is unable, because of the accident, to perform his or her regular duties in the family enterprise.
- (2) Subject to subsections (3) and (4), the amount of the benefit pursuant to this section is the amount required to hire a substitute worker to perform the duties of the insured during the period that the insured is unable to work in the family enterprise as a result of the accident.
- (3) The maximum amount of the family enterprise benefit for all duties carried out in a family enterprise is \$631 per week.
- (4) Notwithstanding subsection (3) but subject to subsection (5), instead of paying a family enterprise benefit weekly, the insurer shall pay the actual and reasonable expenses incurred by the insured to hire as many substitute workers as are necessary to perform the duties the insured would have performed but for the accident if, in the opinion of the insurer:
- (a) the insured has regular duties that are of a temporary nature that require the insured to work extended hours over a short term; or
 - (b) the insured's duties require the use of specialized equipment or education.
- (5) The maximum amount of a family enterprise benefit paid pursuant to subsection (4) is \$32,812 per year.

- (6) The insurer shall:
- (a) adjust the amount of the family enterprise benefit when the insured is able to resume some of the duties the insured carried out in the family enterprise at the date of the accident; and
 - (b) terminate the amount of the family enterprise benefit when the insured is substantially able to resume the duties the insured carried out in the family enterprise at the date of the accident.
- (7) In addition to a family enterprise benefit, the insurer shall reimburse the insured for any actual expenses required by law that the insured paid pursuant to the *Employment Insurance Act* (Canada) and the *Canada Pension Plan* on behalf of the substitute worker as that worker's employer.
- (8) At any time after the 180th day following the accident, an insured, other than a student, who is entitled to a family enterprise benefit may elect to receive an income replacement benefit pursuant to subsection 113(4).
- (9) Notwithstanding subsections (1) to (8), if an insured receives a family enterprise benefit:
- (a) the insurer shall reduce the family enterprise benefit in accordance with section 126 and, for that purpose, that section applies, with any necessary modification, to a family enterprise benefit; and
 - (b) the insurer shall:
 - (i) determine an employment for that insured pursuant to section 132 or 133, and those sections apply, with any necessary modification, to the insured; and
 - (ii) reduce the insured's family enterprise benefit mentioned in subclause (i) in accordance with section 135, and that section applies, with any necessary modification, to the reduction of the family enterprise benefit.

“CAREGIVER BENEFITS

“Caregiver benefits

- 119(1)** An insured is entitled to receive a weekly benefit pursuant to this section if:
- (a) the insured's main occupation at the date of the accident is caring for, without remuneration:
 - (i) persons who are under 16 years of age; or
 - (ii) persons who would qualify for a tax credit pursuant to section 118.3 of the *Income Tax Act* (Canada) for a mental or physical impairment; and
 - (b) as a result of the accident, the insured is unable to care for those persons.

(2) The insurer shall pay a benefit to reimburse the insured for actual and reasonable expenses incurred by an insured to assist the insured with the care of persons described in subsection (1) to a maximum amount of \$631 per week.

(3) On the 181st day after the accident, an insured who is receiving a weekly benefit pursuant to this section shall elect to:

- (a) continue receiving the weekly benefit; or
- (b) receive an income replacement benefit pursuant to subsection 113(4).

(4) Notwithstanding subsection (3), if an insured receiving a benefit pursuant to this section can prove that, but for the accident he or she would, at any point in time subsequent to the accident, no longer care for the persons described in subsection (1) and would have held an employment, the insurer shall:

- (a) determine an employment for the insured; and
- (b) pay the insured an income replacement benefit in accordance with the regulations.

(5) An insured is not entitled to receive a benefit pursuant to this section if:

- (a) the insured elects to receive an income replacement benefit pursuant to subsection (3); or
- (b) the insurer determines an employment for the insured pursuant to subsection (4) and pays an income replacement benefit pursuant to that subsection.

“Other weekly benefits

120(1) Subject to subsection (3), an insured who is receiving a benefit pursuant to section 113, 114, 115, 117 or 118 or a student who is attending an educational institution on a full-time basis is entitled to a weekly benefit pursuant to this section if the insured becomes unable because of the accident to care for persons who, at the date of the accident:

- (a) are under 16 years of age; or
- (b) would qualify for a tax credit pursuant to section 118.3 of the *Income Tax Act* (Canada) for a mental or physical impairment.

(2) The insurer shall pay a benefit pursuant to this section to reimburse the insured for any actual and reasonable expenses incurred by the insured to provide for the care of persons described in subsection (1) to a maximum amount of \$316 per week.

(3) An insured is entitled to receive a weekly benefit pursuant to this section only if the insured’s spouse is unable to care for the persons described in subsection (1) because of the spouse’s:

- (a) illness;
- (b) disability;
- (c) work; or
- (d) studies outside the spousal residence.

“STUDENTS

“Loss of studies benefit

121(1) A student who at the date of the accident is attending school on a full-time basis is entitled to a loss of studies benefit for the period the student is unable to begin or to continue his or her current studies because of the accident.

- (2) The loss of studies benefit mentioned in subsection (1) is:
- (a) in the case of a student studying at the elementary level, \$4,011 for each school year not completed;
 - (b) in the case of a student studying at the secondary level, \$3,726 for each semester not completed, to a maximum of \$7,451 per school year; and
 - (c) in the case of a student studying at the post-secondary level, \$7,451 for each semester not completed, to a maximum of \$14,901 per school year.
- (3) If the student is able to begin or continue a portion of his or her studies, the insurer shall pro-rate the loss of studies benefit set out in clauses (2)(a) to (c) to take into consideration those courses of study that the student was unable to complete as a result of the accident.
- (4) For the purposes of this section, a student is considered to be attending school on a full-time basis if the student:
- (a) is registered in and admitted to a prescribed educational institution on a full-time basis;
 - (b) is attending classes at the educational institution on a regular basis; and
 - (c) has not abandoned his or her studies and has not been expelled from the educational institution.

“Income replacement benefit - during studies

122(1) A student is entitled to an income replacement benefit if, as a result of the accident, and at any time before the completion of the student’s current studies, the student is:

- (a) unable to continue to hold an employment held by the student;
 - (b) unable to hold an employment the student would have held if the accident had not occurred; or
 - (c) deprived of benefits pursuant to the *Employment Insurance Act* (Canada) or any other prescribed benefits to which he or she was entitled at the date of the accident.
- (2) The insurer shall calculate the income replacement benefit pursuant to subsection (1) on the basis of:
- (a) the yearly employment income the student earned or would have earned from all of his or her employment if the student holds employment in the employ of another;

- (b) subject to the regulations, any benefits the student would have received after the accident from the *Employment Insurance Act* (Canada) or any other prescribed benefits; or
- (c) if the student holds employment as a self-employed earner, the greater of:
 - (i) the yearly employment income determined in accordance with the regulations for an employment of the same class as the student's primary employment held at the date of the accident; and
 - (ii) the yearly employment income the student earned or would have earned at the date of the accident from all employments that the student held but for the accident.

“Income replacement benefit - after studies

123(1) If a student is unable because of an accident to hold an employment that the student's current studies would have allowed the student to hold, the student is entitled to an income replacement benefit pursuant to this section.

(2) The insurer shall pay the income replacement benefit pursuant to this section:

- (a) in the case of a student who, at the date of the accident, was under 16 years of age or studying at the elementary level, commencing on the day that the student reaches 16 years of age; and
- (b) in the case of a student who, at the date of the accident, is studying at the secondary level or post-secondary level, commencing on the day scheduled at the date of the accident for completion of the student's current studies.

(3) In the case of a student under 16 years of age or studying at the elementary or secondary level, the insurer shall calculate the income replacement benefit pursuant to this section:

- (a) for the first year following a student's entitlement to an income replacement benefit, on the basis of a yearly employment income determined on the basis of a 40-hour work week paid on the basis of the minimum wage established pursuant to *The Labour Standards Act*; and
- (b) for the period following the one-year period mentioned in clause (a), on the yearly employment income equal to a yearly average computed on the basis of the industrial average wage for the 12 months before the July 1 of the year for which the calculation is made.

(4) In the case of a student studying at the post-secondary level, the insurer shall calculate the income replacement benefit pursuant to this section on the basis of the yearly employment income equal to a yearly average computed on the basis of the industrial average wage for the 12 months before the July 1 of the year for which the calculation is made.

(5) Notwithstanding subsection (3), if a student suffers a catastrophic injury as a result of the accident, the insurer shall calculate the income replacement benefit pursuant to this section on the basis of a yearly employment income computed on the basis of the industrial average wage for the 12 months before the July 1 of the year for which the calculation is made.

“Student entitled to one benefit only

124(1) If a student is entitled to a benefit pursuant to section 123, the student is entitled to the greatest benefit he or she is entitled to receive pursuant to section 117, 118, 120, 122 or 123.

(2) Notwithstanding any other provision of this Division, a student who, by virtue of subsection (1), is entitled to a benefit pursuant to one of the provisions mentioned in subsection (1) is entitled only to that benefit and not to the other benefits pursuant to the other provisions mentioned in that subsection.

“Loss of scholarship, tuition, text books

125(1) A student who is unable, as a result of the accident, to begin or continue his or her current studies or a portion of his or her current studies is entitled to be reimbursed for the following:

- (a) any non-refundable tuition fees;
- (b) any expenses incurred for non-refundable text books; and
- (c) any lost scholarship income in excess of any money received for the expenses mentioned in clauses (a) and (b) that:
 - (i) would have assisted the student with the student’s current studies; and
 - (ii) will not be available to the student at a later date should the student continue the student’s current studies.

(2) The maximum amount of the benefit pursuant to subsection (1) is \$14,901 per school year.

“REDUCTION OF INCOME REPLACEMENT BENEFITS

“Reduction if insured earns reduced income

126(1) Subject to subsections (2) to (4), the insurer shall reduce an insured’s income replacement benefit if:

- (a) the insured earns a yearly employment income that is less than the yearly employment income used by the insurer to compute the insured’s income replacement benefit;
- (b) the insured is able to perform some of the insured’s duties of employment; or
- (c) in the case of an insured who was not employed at the date of the accident and had not displayed any intention of obtaining employment at the date of the accident, the insured is able to perform some of the activities of daily living.

(2) For the purposes of subsection (1), the amount of the insured's reduced income replacement benefit is the amount RIRB calculated in accordance with the following formula:

$$\text{RIRB} = \text{IRB} - (90\% \times \text{NI})$$

where:

IRB is the income replacement benefit the insured is receiving pursuant to section 113, 114 or 115, subsection 119(4) or section 122 or 123; and

NI is the greater of:

- (a) the net income the insured earns from his or her employment; and
- (b) the income replacement benefit the insured is receiving pursuant to section 113, 114 or 115, subsection 119(4) or section 122 or 123 multiplied by the percentage that the insured is either able:
 - (i) to return to work; or
 - (ii) if applicable, to return to the activities of daily living.

(3) Notwithstanding subsection (2), if an insured held employment at the date of the accident, the insurer shall not reduce the insured's income replacement benefit pursuant to this section unless the insured is able to return to an employment.

(4) This section does not apply to an insured whose income replacement benefit is reduced pursuant to section 135.

“Insureds near 65 years or older

127(1) In this section, **‘income benefit’** means a benefit pursuant to section 113, 114, 115, 117 or 118, subsection 119(4) or section 122 or 123.

(2) This section applies only if an insured is 63 years of age or more and not more than 65 years of age at the date of the accident with respect to which an income benefit is payable.

(3) Notwithstanding any other provision of this Part, if an insured is entitled to receive an income benefit pursuant to this Division and, while that insured is receiving the income benefit, that person reaches 65 years of age, the insurer:

- (a) shall not terminate or reduce that insured's income benefit solely on the grounds that the insured has reached 65 years of age; and
- (b) unless the insurer is otherwise entitled pursuant to this Part or the regulations to terminate or reduce the insured's income benefit, shall pay the income benefit to the insured for a period of at least 24 consecutive months after the date the insured first became entitled to the income benefit.

(4) Notwithstanding any provision of this Part, an insured who is 65 years of age or older at the date of the accident is not entitled to income benefits unless that person was employed at the date of the accident.

(5) The insurer shall reduce an income benefit to an insured who is 65 years of age or older at the date of the accident:

- (a) by 25% for the second year following the date of the accident;
- (b) by 50% for the third year following the date of the accident; and
- (c) by 75% for the fourth year following the date of the accident.

(6) An insured mentioned in subsection (5) ceases to be entitled to income benefits four years after the date of the accident.

“Lump sum benefit

128(1) If an income replacement benefit or a substitute worker benefit is paid to an insured for the prescribed period, the insurer shall provide a lump sum benefit to the insured when:

- (a) the insured reaches 65 years of age; or
- (b) the insured’s entitlement to an income replacement benefit or a substitute worker benefit is terminated.

(2) The insurer shall calculate the lump sum benefit pursuant to this section in accordance with the regulations.

(3) An insured is not entitled to a lump sum benefit pursuant to this section if the insured is 65 years of age or older at the date of the accident.

“Reduction of benefit if partially capable

129 Notwithstanding any other provision of this Part, the insurer shall reduce an insured’s income replacement benefit, a substitute worker benefit or a family enterprise benefit in accordance with the regulations if the insured was regularly incapable of holding full-time employment before the accident.

“When benefit not payable

130 Notwithstanding any other provision of this Part, an insured is not entitled to an income replacement benefit, a substitute worker benefit or a family enterprise benefit if the insured was regularly incapable of holding employment before the accident.

“TERMINATION OF DIVISION 4 BENEFITS

“Termination of benefits

131(1) Notwithstanding any other provision of this Part, an insured ceases to be entitled to a benefit pursuant to this Division when any of the following occurs:

- (a) the insured is able to hold the last employment that he or she held before receiving a benefit;

(b) in the case of an insured who was not employed at the date of the accident but who had displayed an intention of obtaining employment at the date of the accident, the insured is able to hold the employment he or she could have held at the date of the accident;

(c) in the case of an insured who was not employed at the date of the accident and had not displayed any intention of obtaining employment at the date of the accident, the insured has substantially returned to the activities of daily living;

(d) the insured is able to hold an employment determined for him or her pursuant to subsection 119(4);

(e) the insured holds an employment from which the yearly employment income is equal to or greater than the yearly employment income on which the benefit is calculated;

(f) subject to section 127, the insured is 65 years of age or older;

(g) the insured does not make himself or herself available for employment;

(h) the insured is able to hold an employment the insured held or would have held at the date of the accident but declines a bona fide offer of employment that, in the opinion of the insurer, the insured is capable of holding;

(i) the insured dies.

(2) Notwithstanding clause (1)(a) or (d), an insured who lost his or her employment because of the accident is entitled to continue to receive an income replacement benefit commencing on the day the insured regains the ability to hold the employment and ending:

(a) on the day the insured holds employment; or

(b) if the insured is unable to find employment, on the expiration of:

(i) 30 days, if the entitlement to the income replacement benefit lasted for at least 90 days and not more than 180 days;

(ii) 90 days, if the entitlement to the income replacement benefit lasted for more than 180 days and not more than one year;

(iii) 180 days, if the entitlement to the income replacement benefit lasted for more than one year and not more than two years;
or

(iv) one year, if the entitlement to the income replacement benefit lasted for more than two years.

(3) If an insured regains his or her ability to hold an employment he or she held or would have held before receiving an income replacement benefit, the insured is entitled to receive an income replacement benefit calculated on the basis of the benefits the insured would have obtained from the *Employment Insurance Act* (Canada) if:

- (a) as a result of seasonal demands, that employment is no longer available; and
- (b) the insured:
 - (i) is not eligible to obtain benefits pursuant to the *Employment Insurance Act* (Canada) as a result of having received an income replacement benefit pursuant to this Division; and
 - (ii) continues to make himself or herself available for employment.

(4) A benefit pursuant to subsection (3) is to be paid until whichever of the following occurs first:

- (a) the date that the insured's benefits pursuant to the *Employment Insurance Act* (Canada) would have expired;
- (b) the date that the insured obtains employment.

“RESIDUAL EMPLOYMENT DETERMINATION

“Determined employment after second anniversary

132(1) This section does not apply to a student.

(2) Following the second anniversary of the accident, the insurer may determine an employment for an insured if the insured:

- (a) is able to work; but
- (b) is not able because of the accident to hold an employment from which the yearly employment income is equal to or greater than the yearly employment income on which an insured's income replacement benefit is calculated.

“Determination of employment for students

133 The insurer may determine an employment for a student at any time from the scheduled day on which the student's current studies end if the student:

- (a) is able to work; but
- (b) is not able because of the accident to hold an employment from which the yearly employment income is equal to or greater than the yearly employment income that would have been paid to the student pursuant to section 123 if that section had applied to the student on the basis of the student being unable to hold employment because of the accident.

“Factors in determining employment

134(1) In determining an employment pursuant to subsection 119(4) or section 132 or 133, the insurer shall consider the following factors, if applicable:

- (a) the education, training, work experience and physical and intellectual abilities of the insured at the time of the determination;
- (b) any knowledge or skill acquired by the insured in a rehabilitation program approved pursuant to this Part;
- (c) the insured’s intended employment at the date of the accident;
- (d) whether the determined employment is available in the jurisdiction in which the insured resides;
- (e) whether the determined employment is available:
 - (i) on a regular and full-time basis; or
 - (ii) if it would not be possible for the insured to hold employment on a regular and full-time basis, on a part-time basis;
- (f) any other prescribed factors.

(2) Subject to clause (1)(e) and section 135, the income replacement benefit of an insured for whom an employment is determined pursuant to section 132 or 133 is not to be less than an income replacement benefit calculated on the basis of a yearly employment income determined on the basis of a 40-hour work week paid on the basis of the minimum wage established pursuant to *The Labour Standards Act*.

“Reduction for determined employment

135(1) Subject to the other provisions of this Division, the insurer shall reduce an insured’s income replacement benefit in accordance with subsection (2) if:

- (a) the insured holds or is able to hold an employment determined for the insured pursuant to section 132 or 133; or
- (b) one year has expired since an employment was determined for the insured pursuant to section 132 or 133.

(2) For the purposes of subsection (1), the amount of an insured’s reduced income replacement benefit is the amount RIRB calculated in accordance with the following formula:

$$\text{RIRB} = \text{IRB} - \text{NI}$$

where:

IRB is the income replacement benefit the insured is receiving pursuant to section 113, 114 or 115, subsection 119(4) or section 122 or 123; and

NI is the income replacement benefit the insured would earn from an employment and calculated on the greater of:

- (a) the yearly employment income the insured actually earns from holding an employment; and
- (b) the yearly employment income determined in accordance with the regulations.

“CALCULATION OF DIVISION 4 BENEFITS

“Maximum yearly insurable earnings

136(1) The total amount of all benefits that an insured may receive pursuant to this Division is not to exceed the maximum yearly insurable earnings.

(2) The amount of the maximum yearly insurable earnings for 2002 and each year after 2002 is the amount MYIE calculated in accordance with the following formula:

$$\text{MYIE} = \$50,000 \times \frac{\text{IAWY}}{\text{IAW95}}$$

where:

IAWY is the average of the average industrial average wage for the 12 months before July 1 of the year before the year for which the maximum yearly insurable earnings are being calculated; and

IAW95 is the average of the industrial average wage for the 12 months before July 1, 1994.

(3) For the purposes of this section, the insurer shall use the most recent data available from Statistics Canada on October 1 of the year before the year for which the maximum yearly insurable earnings are being calculated.

“Industrial average wage

137(1) Subject to subsections (2) and (3), the industrial average wage is the industrial aggregate average weekly earnings for all employees in Saskatchewan as published monthly by Statistics Canada.

(2) If no figure for the industrial aggregate average weekly earnings for all employees in Saskatchewan is published by Statistics Canada for a month, the insurer shall determine a figure for that month in accordance with the regulations.

(3) If, after the day this Part comes into force, Statistics Canada uses a new method to determine the industrial aggregate average weekly earnings for all employees for Saskatchewan for a particular month and the new method results in a change of more than 1% when compared with the former method, the insurer shall determine a figure in accordance with the regulations.

“Limit on income replacement benefits

138 Subject to the other provisions of this Division, the amount of an income replacement benefit that an insured is entitled to is 90% of the insured's net income.

“Calculation of net income

139 The amount of an insured’s net income is the amount NI calculated in accordance with the following formula:

$$NI = YEI - D$$

where:

YEI is the lesser of:

- (a) the insured’s yearly employment income; and
- (b) the maximum yearly insurable earnings; and

D is an amount calculated by the insurer in accordance with this section and the regulations for income tax pursuant to *The Income Tax Act, 2000* and the *Income Tax Act (Canada)*, premiums pursuant to the *Employment Insurance Act (Canada)* and contributions pursuant to the *Canada Pension Plan*.

“RELAPSE**“Relapse within two years**

140(1) This section applies if an insured suffers a relapse of a bodily injury within two years after the later of:

- (a) the end of the last period for which the insured received a benefit pursuant to this Division, other than a benefit pursuant to section 126 or 135; and
- (b) the date of the accident, if the insured was not entitled to a benefit pursuant to this Division before the relapse.

(2) An insured who is unable to hold an employment held by the insured at the date of the relapse is entitled to a benefit pursuant to this Division.

(3) The insured is entitled to a benefit pursuant to subsection (2) from the date of the relapse.

(4) The insurer shall calculate the benefit pursuant to subsection (2) on the basis of the greater of:

- (a) the yearly employment income used by the insurer immediately before the end of the period mentioned in clause (1)(a); and
- (b) the yearly employment income of the insured at the date of the relapse.

“Relapse after two years or later

141(1) This section applies if an insured suffers a relapse of a bodily injury two years or more after the later of:

- (a) the end of the last period for which the insured received a benefit pursuant to this Division, other than an income replacement benefit pursuant to section 126 or 135; and
- (b) the date of the accident, if the insured was not entitled to a benefit pursuant to this Division before the relapse.

(2) An insured who is unable to hold an employment held by the insured at the date of the relapse is entitled to a benefit pursuant to this Division.

(3) The insurer shall calculate a benefit pursuant to this section on the basis that the relapse is a second accident.

“Limits on benefits

142 If an insured is receiving a benefit pursuant to this Division and subsequently becomes entitled to any other benefit pursuant to this Division on the basis of a relapse or a second accident:

- (a) the insured is entitled to receive the greater benefit; but
- (b) the insured is entitled to receive only one of those benefits.

“MEDICAL APPOINTMENTS

“Medical appointments

143(1) An insured is entitled to an income replacement benefit if, as a result of the accident, the insured is unavailable for work as a result of attending a medical appointment or treatment program authorized by the insurer.

(2) The insurer shall:

- (a) calculate the income replacement benefit pursuant to this section on the basis of the yearly employment income the insured earns from his or her employment; and
- (b) adjust the benefit calculated pursuant to clause (a) to take into consideration the number of hours of work missed.

(3) An insured is not entitled to an income replacement benefit pursuant to subsection (1) if the insured is currently receiving any of the following:

- (a) an income replacement benefit pursuant to another provision of this Division;
- (b) a caregiver benefit pursuant to section 119;
- (c) a family enterprise benefit;
- (d) a substitute worker benefit.

**“DIVISION 5
Death Benefits**

“Death benefits

144(1) Subject to subsections (2) to (6) and to the regulations, a surviving spouse is entitled to a weekly death benefit in an amount DB calculated in accordance with the following formula:

$$DB = (50\% \times IRB)$$

where IRB is the weekly income replacement benefit that an insured, other than a seasonal worker, would have been entitled to calculated on the basis of the greater of:

- (a) the yearly employment income the insured earned or would have earned from all employments held at the date of the accident; and
- (b) the yearly employment income the insured earned in the year before the accident excluding any benefits paid to the insured pursuant to the *Employment Insurance Act* (Canada) if the insurer is satisfied that the insured would have held a more remunerative employment at the date of the accident but for special circumstances.

(2) If the insured was a seasonal worker at the date of the accident, the surviving spouse of the insured is entitled to a weekly death benefit in an amount DB calculated in accordance with the following formula:

$$DB = (50\% \times IRB)$$

where IRB is the weekly income replacement benefit that the insured would have been entitled to calculated on the basis of the greater of:

- (a) the yearly employment income the insured earned or would have earned from all employments held at the date of the accident as calculated in the manner set out in the regulations; and
- (b) the average yearly employment income the insured earned in the two years before the accident as set out in the regulations, including any benefits paid to the insured pursuant to the *Employment Insurance Act* (Canada), any benefits received under an employment disability plan and any benefits the insured received pursuant to *The Workers' Compensation Act, 1979* or any similar provisions in any other Act, or any legislation of any other jurisdiction, that relate to the compensation of individuals injured in accidents.

(3) Notwithstanding subsection (2), if an insured held or would have held a seasonal employment at the date of the accident but the insured did not hold the employment held at the date of the accident in the two years before the accident, the yearly employment income to be used in clause (a) of the definition of IRB in subsection (2) is the yearly employment income as determined in accordance with the regulations for an employment of the same class as the seasonal employment that the insured held or would have held but for the accident.

(4) The minimum death benefit a surviving spouse is entitled to receive pursuant to this section is \$51,582.

(5) The weekly death benefit payable pursuant to this section is payable until the surviving spouse dies.

(6) Subject to subsection (7), if at the date of the accident the insured has a dependant, the insurer shall pay a weekly death benefit for the care and maintenance of the insured's dependant in the amount B calculated in accordance with the following formula:

$$B = (5\% \times \text{IRB}) \times \text{DC}$$

where:

IRB is the income replacement benefit of the insured as calculated pursuant to subsection (1) or (2); and

DC is the number of the insured's dependants.

(7) The minimum weekly death benefit payable pursuant to subsection (6) must be not less than the weekly benefit set out in the regulations.

(8) The insurer shall pay the weekly death benefit set out in subsections (6) and (7) to the insured's surviving spouse.

(9) Notwithstanding subsection (8), the insurer may pay the weekly death benefit for the dependant to the Public Guardian and Trustee if:

- (a) the dependant does not reside with the surviving spouse; or
- (b) in the insurer's opinion, the surviving spouse has neglected or abandoned the dependant.

(10) Subject to subsection (11), the weekly death benefits mentioned in subsections (6) and (7) are payable until whichever of the following occurs first:

- (a) the dependant reaches 21 years of age;
- (b) the dependant dies.

(11) In the case of a person who is a dependant within the meaning of subclause 100(b)(ii), the dependant's weekly death benefits mentioned in subsections (6) and (7) are payable until whichever of the following occurs first:

- (a) the dependant dies;
- (b) the person is no longer considered a dependant within the meaning of subclause 100(b)(ii).

“Death benefit - dependant

145(1) If both of a dependant’s parents die in the same accident, the dependant is entitled to the death benefit mentioned in section 144 for each parent as if the dependant were the surviving spouse of each parent.

(2) If the insured is the sole parent of a dependant and dies as a result of an accident, the dependant is entitled to the death benefit mentioned in section 144 as if the dependant were the surviving spouse of the insured.

(3) If, at the date of the accident, the surviving parent of the insured’s dependant is not entitled to the weekly death benefit set out in subsection 144(1), the dependant is entitled to the death benefit mentioned in section 144 as if the dependant were the surviving spouse of the insured.

(4) A death benefit mentioned in this section is payable until whichever of the following occurs first:

- (a) the dependant reaches 21 years of age; and
- (b) the dependant dies.

(5) Notwithstanding subsection (4), if a person is a dependant within the meaning of subclause 100(b)(ii), the insurer shall pay to the dependant the greater of:

- (a) the death benefit that would otherwise be payable pursuant to subsections (1) to (4); and
- (b) \$51,582.

(6) If there is more than one dependant, the death benefits mentioned in this section are to be paid in the prescribed manner.

“Capitalization of death benefits

146(1) A surviving spouse or a dependant who is entitled to a death benefit pursuant to this Division may elect to have the benefit capitalized and, subject to the regulations, paid out as a lump sum.

(2) Subject to the regulations, an election pursuant to subsection (1) must be made within five years after the date of the death of the insured and is not revocable.

(3) The insurer shall undertake the capitalization in the prescribed manner.

“Lump sum death benefit

147(1) If an insured dies leaving no surviving spouse, dependant, parent or non-dependant child, the insured’s estate is entitled to a lump sum benefit of \$11,462.

(2) Subject to subsections (3) and (4), if, on the day the insured dies, the insured has no surviving spouse or dependant but leaves a parent or non-dependant child, the insurer shall pay the sum of \$11,462 to each parent and non-dependant child.

(3) If five or more persons are entitled to a benefit pursuant to subsection (2), the total sum payable to all those persons is \$51,582 and that amount shall be divided equally among all persons entitled to the benefit.

(4) Notwithstanding subsection (2), if, on the day the insured dies, the insured was under 21 years of age and leaves no surviving spouse or dependant but leaves one or more parents, the insurer shall pay the sum of \$22,924 to the insured's estate.

(5) Notwithstanding any Act or law, if the insured, the insured's surviving spouse and the insured's dependant die from injuries sustained in the same accident, they are all deemed to have died at the same time and, for the purposes of determining the availability of benefits pursuant to this Division, there is deemed to be no surviving spouse or dependant.

“Funeral benefit

148 The insured's estate is entitled to a lump sum benefit of \$7,500 for the insured's funeral.

“Education benefit for surviving spouse

149(1) Subject to the regulations, the insurer may pay an education benefit to a surviving spouse who, at the date of the accident, was dependent on the insured.

(2) An education benefit mentioned in subsection (1) is to be used for the education of the surviving spouse.

(3) The maximum amount of an education benefit pursuant to this section is \$34,388.

“Vocational counselling

150 Subject to the regulations, the insurer may pay a maximum benefit of \$500 to an insured's surviving spouse for vocational counselling.

“Grief counselling

151 Subject to the regulations, the insurer may pay a maximum benefit of \$1,000 to the insured's family for grief counselling.

“DIVISION 6

Permanent Impairment Benefits

“Permanent impairment benefit

152 Subject to this Division and the regulations, an insured who suffers a permanent impairment because of the accident is entitled to a lump sum benefit for the permanent impairment.

“When beneficiary dies

153(1) Subject to subsection (2), a lump sum benefit pursuant to this Division is not payable if the insured dies of a cause related to the accident.

(2) If the insured dies of a cause unrelated to the accident and, on the date of his or her death, the insured is suffering a permanent impairment arising out of the accident, the insurer shall:

(a) estimate the amount of the lump sum benefit that it would have awarded to the insured respecting the permanent impairment if the insured had not died; and

(b) pay that lump sum benefit to the insured's estate.

“Evaluation of permanent impairment

154(1) The insurer shall evaluate an insured’s permanent impairment as a percentage that is determined on the basis of the prescribed schedule of permanent impairments.

(2) If an insured’s permanent impairment is not listed on the prescribed schedule of permanent impairments, the insurer shall determine a percentage for the permanent impairment using the prescribed schedule as a guide.

“Calculation of lump sum benefit

155(1) If an insured suffers a permanent impairment, the insurer shall calculate the lump sum benefit in the manner set out in this section.

(2) For the purposes of subsection (1), the amount of a lump sum benefit is the amount PI calculated in accordance with the following formula:

$$PI = \$143,282 \times P$$

where P is the percentage determined pursuant to section 154.

(3) Notwithstanding subsection (2), if the insured is determined to have suffered a permanent impairment that includes a catastrophic injury, the amount of the lump sum benefit for a permanent impairment payable pursuant to this Division is the amount CPI calculated in accordance with the following formula:

$$CPI = \$175,000 \times P$$

where P is the percentage determined pursuant to section 154.

(4) The minimum amount of a lump sum benefit for a permanent impairment pursuant to this section is \$573, and the maximum amount is:

(a) \$143,282 for an insured who has suffered a permanent impairment; and

(b) \$175,000 for an insured who has suffered a permanent impairment that includes a catastrophic injury.

“DIVISION 7**Benefits for Expenses****“Benefits for living assistance expenses**

156(1) Subject to the regulations, if an insured is unable because of the accident to care for himself or herself or to perform the prescribed basic activities of daily living without assistance, the insurer shall pay a living assistance benefit to the insured for expenses related to obtaining assistance.

(2) The insurer shall calculate and reimburse the insured for the living assistance benefit in accordance with the regulations.

(3) The maximum amount of a living assistance benefit is \$947 per week.

“Benefits - other expenses

157(1) Subject to the regulations, an insured is entitled to reimbursement for the following items:

- (a) medical and paramedical care, including transportation and lodging for the purpose of receiving the care;
- (b) prostheses or orthopaedic devices;
- (c) cleaning, repairing or replacing clothing that the insured was wearing at the date of the accident and that was damaged;
- (d) any other prescribed expenses.

(2) The amount of a benefit pursuant to this section is the amount of the expense that the insured is not entitled to be reimbursed for pursuant to any other Act.

“Examination by practitioner

158(1) If requested to do so by the insurer, an insured shall undergo an examination by a practitioner chosen by the insured.

(2) If requested to do so by the insurer, an insured shall undergo an examination by a practitioner chosen by the insurer.

(3) The insurer shall bear the expense of any examination made pursuant to this section.

(4) A practitioner shall conduct an examination pursuant to this section in accordance with the regulations.

(5) The insurer may request an examination pursuant to this section as often as it may reasonably require while a claim pursuant to this Part is pending.

(6) In the case of the death of a claimant, the insurer may request any medical report that is prepared as a result of any autopsy conducted with respect to that death.

“Transportation and lodging expenses

159(1) An insured who undergoes an examination pursuant to section 158 is entitled to a benefit to reimburse his or her transportation, lodging and other expenses incurred in connection with the examination.

(2) The insurer shall calculate the amount of a benefit pursuant to this section in accordance with the regulations.

“Benefits for accompanying insured

160 If, in the opinion of the insurer, a person is required to accompany an insured because of an insured’s physical or mental condition or age so that the insured can receive medical or paramedical care, the person accompanying the insured is entitled to be reimbursed for lost earnings, transportation and lodging costs and other associated prescribed expenses.

“Additional expenses

161(1) In this section, ‘**non-refundable expense**’ means an expense:

- (a) that an insured incurred before the accident for a service or benefit that, as a consequence of the accident, the insured is unable to use; and
- (b) that is not refundable to the insured.

(2) Subject to subsection (3), the insurer shall pay all actual and reasonable non-refundable expenses incurred by an insured.

(3) The maximum benefit pursuant to this section is \$1,000.

“Financial counselling

162(1) Subject to the regulations, the insurer may reimburse a beneficiary for authorized financial counselling if the beneficiary receives a lump sum payment in excess of the prescribed amount.

(2) The maximum benefit pursuant to this section is \$1,000.

**“DIVISION 8
Claims**

“Application for benefits

163 A claimant shall apply for a benefit in the prescribed manner.

“Time limits for applying

164(1) Subject to subsections (2) to (5), a claimant must apply for a benefit:

- (a) within two years after the date of the accident on which the claim is based; or
- (b) within two years after the date on which an observation of symptoms of a bodily injury is first made by a practitioner if those symptoms are not apparent immediately after the accident but are observed by the practitioner within two years after the date of the accident.

(2) In the case of an application for a benefit based on the death of an insured, the claimant must apply within two years after the date of the insured’s death.

(3) If a claimant is a minor on the date of the accident on which the claim is based, the claimant must apply for a benefit within two years after the date that the claimant reaches 18 years of age.

(4) The time limits set out in this section are postponed for a claimant who, by reason of mental disorder, is not competent to manage his or her estate until the claimant:

- (a) becomes competent to manage his or her estate; or
- (b) is represented by a personal guardian or property guardian appointed or continued pursuant to *The Public Guardian and Trustee Act* or *The Adult Guardianship and Co-decision-making Act* who is aware of a claim and has the legal capacity to make the claim on behalf of the claimant.

(5) The insurer may waive a time limit set out in this section if it is satisfied that the claimant had a reasonable excuse for failing to apply within the time limit.

“Release of information

165(1) A claimant shall provide any information, and any authorization necessary to obtain that information, that is requested by the insurer for the purposes of this Part.

(2) The insurer shall, as soon as is practicable, release to a claimant, at the claimant’s request, all of the insurer’s information concerning the claimant and his or her claim that the claimant:

- (a) is entitled by law to receive; and
- (b) may reasonably require for the purposes of this Part.

“Proof of salary

166 Within six days after receiving a written request from the insurer, an employer or former employer of an insured shall provide the insurer with proof of the earnings of the insured while employed by the employer or former employer.

“Report of examination

167(1) A practitioner who examines an insured at the request of the insurer pursuant to section 158 shall provide the insurer with a written report on the condition of the insured and on any other related matter requested by the insurer.

(2) If the insurer obtains a report respecting an examination conducted pursuant to section 158, the insurer, at the request of the insured who underwent the examination, shall provide a copy of the report to any practitioner designated by the insured.

“Report of accident

168 Within six days after receiving a written request from the insurer, a practitioner who or hospital that is consulted by an insured or who or that treats an insured after the accident shall provide the insurer with a written report respecting:

- (a) the consultation or the treatment; and
- (b) any finding or recommendation relating to the consultation or treatment.

“Reimbursement for costs of report

169 Subject to the regulations, an insured is entitled to reimbursement for his or her expenses in obtaining a report from a practitioner if:

- (a) the insured made an appeal pursuant to Division 11 and filed the report in support of the appeal; and
- (b) the appeal mentioned in clause (a) is allowed.

“Claimant to advise of changes

170(1) Every claimant shall notify the insurer without delay of any changes that affect or that might affect:

- (a) his or her right to claim or receive a benefit; or
- (b) the amount of a benefit that he or she is claiming or receiving.

(2) For the purposes of subsection (1), a change includes, but is not limited to, a change in the claimant’s medical condition.

“Insurer to advise and assist claimants

171 The insurer shall advise and assist every claimant and shall endeavour to ensure that every claimant is informed of and receives the benefits to which the claimant is entitled.

**“DIVISION 9
Payment of Benefits**

“Payment of benefits

172(1) Subject to subsection (2), and notwithstanding any other provision in this Division, no insured is entitled to receive for the first seven days after the accident any of the following benefits:

- (a) an income replacement benefit;
- (b) a substitute worker benefit;
- (c) a family enterprise benefit.

(2) If an insured suffers a catastrophic injury, the insured is entitled to receive the benefits mentioned in subsection (1) from the first day after the accident.

(3) The insurer shall calculate the benefits payable pursuant to Divisions 3, 5 and 6 as of the date of the accident.

(4) The insurer shall pay the following benefits to the insured once every 14 days:

- (a) an income replacement benefit;
- (b) a substitute worker benefit;
- (c) a family enterprise benefit;
- (d) a benefit pursuant to section 119 or 120;
- (e) a living assistance benefit.

(5) The insurer shall pay a death benefit to a beneficiary once every 14 days subject to the beneficiary’s election to obtain a lump sum benefit.

(6) The insurer may request that a beneficiary provide it with receipts before paying a benefit and, if the insurer makes that request, the beneficiary may receive the benefit only after receipts that are satisfactory to the insurer are submitted to the insurer.

“When payment for catastrophic injury may be made

173(1) If the nature of an insured’s bodily injury prevents the insurer from determining if the insured suffered a catastrophic injury at the date of the accident, the insurer is not obligated to pay the insured benefits pursuant to this Part on the basis of a catastrophic injury until the medical information indicates that the insured suffered a catastrophic injury.

(2) When the medical information indicates that an insured suffered a catastrophic injury, the insurer shall, if applicable:

- (a) pay benefits to the insured on the basis of a catastrophic injury; and
- (b) pay to the insured any additional benefit that would have been paid to him or her as if the catastrophic injury assessment was made at the date of the accident together with interest pursuant to section 210.

“When Division 4 benefits not payable

174(1) Notwithstanding any other provision of this Part, no insured is entitled to any benefit pursuant to Division 4 for any period that the insured is serving a sentence of imprisonment.

(2) If an insured mentioned in subsection (1) is acquitted of the offence for which the imprisonment was served, the insurer shall pay to the insured the amount of the benefit that would have been paid to him or her if he or she had not been imprisoned, together with interest pursuant to section 210, from the day the benefit was suspended until the day of payment.

(3) Notwithstanding any other provision of this Part, an insured is not entitled to any benefit pursuant to Division 4, except benefits pursuant to sections 119 and 120, in the following circumstances:

- (a) the insured is more than 50% responsible for the accident; and
- (b) the insured:
 - (i) has been convicted:
 - (A) of an offence pursuant to paragraph 253(a) or (b), subsection 254(5) or subsection 255(2) or (3) of the *Criminal Code*; or
 - (B) of an offence pursuant to a law of a state of the United States of America substantially similar to an offence mentioned in paragraph (A);

and, on at least one other occasion within the five years before the accident, has been convicted of an offence listed in this subclause as a result of the operation of a motor vehicle; or

- (ii) was the operator of a motor vehicle who:
 - (A) intentionally caused or attempted to cause bodily injury to another person; and

- (B) has been convicted of:
 - (I) an offence set out in section 235, 236, 239, 249, 266, 267, 268 or 269 of the *Criminal Code* as a result of the operation of a motor vehicle; or
 - (II) an offence pursuant to a law of a state of the United States of America substantially similar to an offence mentioned in subparagraph (I).

“When permanent impairment benefits not payable

175 Notwithstanding any other provision of this Part, an insured is not entitled to any lump sum benefit for a permanent impairment pursuant to Division 6 to which the insured would otherwise be entitled if:

- (a) the insured is more than 50% responsible for the accident; and
- (b) the insured:
 - (i) at the date of the accident:
 - (A) was the operator or had the care and control of a motor vehicle involved in the accident; and
 - (B) was under the influence of alcohol or drugs to such an extent that the insured was incapable for the time being of having proper control of the motor vehicle;
 - (ii) was convicted, with respect to the accident, of:
 - (A) an offence pursuant to paragraph 253(a) or (b), subsection 254(5) or subsection 255(2) or (3) of the *Criminal Code*; or
 - (B) of an offence pursuant to a law of a state of the United States of America substantially similar to an offence mentioned in paragraph (A); or
 - (iii) at the date of the accident, was the operator of a motor vehicle who:
 - (A) intentionally caused or attempted to cause bodily injury to another person; and
 - (B) is convicted of:
 - (I) an offence set out in section 235, 236, 239, 249, 266, 267, 268 or 269 of the *Criminal Code* as a result of the operation of a motor vehicle; or
 - (II) an offence pursuant to a law of a state of the United States of America substantially similar to an offence mentioned in subparagraph (I).

“Proof of conviction

176 For the purposes of sections 174 and 175, a certificate purporting to be signed by a judge of the convicting court or other officer having custody of the records of the convicting court certifying that the insured has been convicted of an offence mentioned in section 174 or 175 is admissible in evidence as proof, in the absence of evidence to the contrary, of the conviction of the insured without proof of the handwriting or position of the person purporting to have signed the certificate.

“Beneficiary may appeal decision of insurer

177 A claimant who disagrees with a determination of the insurer pursuant to section 174 or 175 may appeal the determination to the Court of Queen’s Bench, in the prescribed manner, within 180 days after receiving written notice of the insurer’s determination.

“Payment of loss of studies benefits

178 The insurer shall pay a loss of studies benefit payable pursuant to section 121 to the student at the end of the semester or school year, as the case may be, that the student did not complete.

“To whom benefits to reimburse expenses may be paid

179 The insurer shall pay a benefit related to reimbursing expenses pursuant to Division 3 or 7 to the beneficiary.

“Payment to estate

180 If a benefit is payable to a beneficiary but not paid on or before the day he or she dies, the insurer shall pay the benefit to the beneficiary’s estate.

“Payment to guardians

181(1) If a beneficiary who is entitled to a benefit has a personal guardian or property guardian appointed or continued pursuant to *The Public Guardian and Trustee Act* or *The Adult Guardianship and Co-decision-making Act* who is authorized to receive the payment, the insurer shall pay the benefit to the personal guardian or property guardian.

(2) Notwithstanding any provision of this Part, the insurer may at any time elect to pay a benefit to the Public Guardian and Trustee if the Public Guardian and Trustee is authorized by law to accept the payment.

“Benefits, other than income replacement benefits, not subject to seizure or assignment

182(1) Subject to sections 11.1 and 202, the regulations and *The Enforcement of Maintenance Orders Act, 1997*, benefits, other than income replacement benefits, are exempt from garnishment, seizure, attachment, execution and any other process or claim.

(2) A beneficiary who is entitled to any benefits, other than income replacement benefits, may not assign the benefits to another person, and any purported assignment is null and void.

“When insurer may refuse to pay or may reduce, suspend or terminate benefits

183 The insurer may refuse to pay a benefit to a beneficiary or may reduce the amount of a benefit or suspend or terminate the benefit if the beneficiary:

- (a) knowingly provides false or inaccurate information to the insurer;
- (b) refuses or neglects to produce information required by the insurer for the purposes of this Part or to provide an authorization reasonably required by the insurer to obtain the information;
- (c) without valid reason, refuses to return to his or her former employment, leaves an employment that he or she could continue to hold, or refuses a new employment;
- (d) without valid reason, neglects or refuses to undergo an examination by a practitioner, or interferes with an examination by a practitioner, requested or required by the insurer;
- (e) without valid reason, refuses, does not follow or is not available for treatment recommended by a practitioner and the insurer;
- (f) without valid reason, prevents or delays recovery by his or her activities;
- (g) without valid reason, does not follow or participate in a rehabilitation program; or
- (h) prevents or obstructs the insurer from exercising any of its rights of recovery or subrogation pursuant to this Part.

**“DIVISION 10
Indexation of Benefits**

“Interpretation of division

184(1) In this Division, **‘consumer price index’** means the consumer price index mentioned in subsections (2) to (4).

(2) Subject to subsections (3) and (4), in this Division, the consumer price index is the ‘all-items’ Consumer Price Index for Saskatchewan as published monthly by Statistics Canada.

(3) If no figure for the ‘all-items’ Consumer Price Index for Saskatchewan is published by Statistics Canada for a month, the insurer shall determine a figure for that month in accordance with the regulations.

(4) If, after the day this Part comes into force, Statistics Canada uses a new method to determine the ‘all-items’ Consumer Price Index for Saskatchewan for a particular month and the new method results in a change of more than 1% when compared with the former method, the insurer shall determine a figure in accordance with the regulations.

“Timing of required adjustments

185(1) Subject to subsection (2), the insurer shall adjust the amount of the yearly employment income on the anniversary date of the accident for the purposes of recalculating an insured’s net income pursuant to section 139.

(2) On January 1 of each year, the insurer shall adjust the amounts set out in this Part, other than the maximum yearly insurable earnings set out in section 136.

(3) The amounts as adjusted pursuant to subsection (2) must be applied in calculating the amount of any benefit.

“Calculation of adjustment

186(1) Subject to section 187, if an amount is to be adjusted pursuant to this Division, the adjusted amount is the amount AM calculated in accordance with the following formula:

$$AM = A \times \frac{CPICY}{CPIPY}$$

where:

A is the amount to be adjusted;

CPICY is the consumer price index for the year in which the adjustment is being made; and

CPIPY is the consumer price index for the previous year.

(2) For the purposes of this section, the consumer price index for a year is the average of the consumer price indices for the 12 months before October 1 of the previous year.

(3) If the average of the monthly consumer price indices for a year includes more than one decimal, only the first digit is to be retained, and it is to be increased by one unit if the second digit is greater than four.

(4) If the ratio between the consumer price index for the current year and the consumer price index for the previous year includes more than three decimals, only the first three digits are to be retained, and the third digit is to be increased by one unit if the fourth digit is greater than four.

(5) After adjusting pursuant to this section, the insurer shall round the resulting amount to the nearest dollar.

“Cap on adjustments

187(1) Subject to subsection (2), if the ratio between the consumer price index for the current year and the consumer price index for the previous year exceeds 1.06:1, the ratio is deemed to be 1.06:1.

(2) When authorized by the regulations, the insurer may use the ratio calculated pursuant to section 186 even though the ratio between the consumer price index for the current year and the consumer price index for the previous year exceeds 1.06:1.

**“DIVISION 11
Insurer’s Decisions and Appeals**

“Insurer’s decisions final

188 Notwithstanding any other Act or law, any decision made or action taken by the insurer pursuant to this Part is final and conclusive and may be reviewed by a court only in accordance with this Division.

“Insurer to give written reasons

189(1) The insurer shall give a claimant a written decision respecting the claimant’s claim for a benefit.

(2) At the time the insurer sends a claimant a written decision, it shall give the claimant:

- (a) written reasons for the decision; and
- (b) written notice of the claimant’s right to ask for a review and appeal of the insurer’s decision pursuant to this Division.

“Reconsideration before review or appeal

190(1) The insurer at any time may reconsider its decision with respect to a claim for a benefit if it is satisfied that new information is available respecting the claim.

(2) At any time before a claimant applies for a review of or appeals a decision, the insurer may reconsider the decision if:

- (a) in the opinion of the insurer, a substantive or procedural error was made respecting the decision; or
- (b) the decision contains a written error, an error in calculating or a clerical error.

“Application for review

191(1) Within 60 days after receiving notice of a decision pursuant to this Part, a claimant may apply in writing to the insurer for a review of the decision.

(2) The insurer may waive the time limitation mentioned in subsection (1) if it is satisfied that the claimant has a reasonable excuse for not making the application within that time limitation.

(3) On a review of its decision, the insurer may set aside, confirm or vary its decision.

(4) The insurer shall provide a claimant who applied for a review with written reasons for its decision and a written notice of the claimant’s right to appeal the insurer’s decision pursuant to this Part.

“Mediation

192(1) Within 30 days after receiving the insurer’s decision pursuant to section 191, a claimant may notify the insurer in writing of the claimant’s request to mediate the claimant’s claim for benefits.

(2) A claimant who requests mediation shall pay the insurer a prescribed fee.

- (3) In the claimant's request for mediation, the claimant shall state the issues respecting the claim that are to be the subject of the mediation.
- (4) The claimant and the insurer shall agree on the appointment of a mediator within 15 days after the insurer receives a written request for mediation.
- (5) If the claimant and the insurer are unable to agree on a mediator within the period mentioned in subsection (4), either the claimant or the insurer may apply to the Court of Queen's Bench to appoint a mediator.
- (6) A mediator appointed pursuant to this section shall endeavour to assist the parties to settle the issues that are the subject of the mediation.
- (7) Subject to this section, a mediation pursuant to this section is to be conducted in accordance with the prescribed procedures.
- (8) The insurer shall bear the costs of the mediation.
- (9) Evidence arising from anything said, evidence of anything said or evidence of an admission or communication made in the course of mediation pursuant to this section is not admissible in any appeal pursuant to this Part, except with the consent of the mediator, the claimant and the insurer.

“Application for appeal

193 A claimant may appeal the insurer's decision on review to the Court of Queen's Bench:

- (a) subject to clause (b), within 90 days after receiving the insurer's written reasons pursuant to section 191; or
- (b) if a claimant has requested mediation pursuant to section 192, within 90 days after the termination of mediation.

“Appeal

194(1) On an appeal, the Court of Queen's Bench shall adopt the insurer's findings of fact unless the claimant puts them in issue.

- (2) If a claimant puts the insurer's findings of fact in issue, the Court of Queen's Bench may hold a hearing to determine the facts.
- (3) On an appeal, the Court of Queen's Bench may:
 - (a) set aside, confirm or vary the insurer's decision; or
 - (b) make any decision that the insurer is authorized to make pursuant to this Part.
- (4) If the Court of Queen's Bench determines that the insurer should have been paying the claimant benefits other than those which the insurer has been paying, the Court may award interest on the value of the benefits not paid, from the date when those benefits should have been paid until the date of the Court's decision.
- (5) Subject to the regulations, the insurer shall reimburse a claimant who is successful on an appeal pursuant to this section or section 195 for the claimant's costs on a solicitor and client basis.

“Appeal to the Court of Appeal

195(1) The insurer or the claimant may appeal a decision of the Court of Queen’s Bench to the Court of Appeal only on a question of law or jurisdiction.

(2) An appeal pursuant to this section must be made within 30 days after the date of the decision of the Court of Queen’s Bench or within any further time that a judge of the Court of Appeal may allow.

“Appeal does not stay decision

196 An application for review or appeal pursuant to this Division respecting a benefit does not stay or affect the validity of the insurer’s decision respecting the payment of a benefit.

**“DIVISION 12
Recovery of Benefits**

“Overpayment

197(1) The following payments are overpayments pursuant to this Part:

(a) a benefit payment made under a mistake of fact or as a result of an error on behalf of the insurer that is in excess of a benefit to which the person is entitled or that provides the person with a benefit the person is not otherwise entitled to receive;

(b) a benefit payment made to a person who prevents or obstructs the insurer from exercising any of its rights of subrogation pursuant to this Part;

(c) any benefit obtained by fraud.

(2) A person who has received an overpayment pursuant to this Part shall repay the amount of the overpayment to the insurer.

(3) An overpayment pursuant to this Part is a debt due to the insurer, and the insurer may recover an overpayment:

(a) by deducting the amount of the overpayment from any other payments that the insurer owes to that person; and

(b) by any other means allowed by law.

“Time limits for recovery

198 The insurer may commence an action to recover an overpayment:

(a) within two years after the date that the amount of the overpayment was paid to the person;

(b) if the amount of the overpayment was paid as a result of fraud, within two years after the day the fraud is first known or discovered by the insurer; or

(c) if the person to whom the benefits were paid has prevented or obstructed the insurer from exercising its rights of subrogation, within two years after the date that the insurer knows about or first discovers an act of that person relating to the prevention or obstruction.

“Cancellation of overpayment

199 The insurer may cancel all or any part of an overpayment if the insurer considers that it is not recoverable.

“Certain amounts not overpayments

200 Notwithstanding section 197, the following amounts are not overpayments for the purposes of this Part:

- (a) any benefits paid in advance by the insurer before making a decision respecting the claimant’s entitlement, unless the benefits were obtained by fraud;
- (b) any benefits paid by the insurer before a decision of the Court of Queen’s Bench or the Court of Appeal to cancel the benefit or reduce the amount of the benefit, unless the benefits were obtained by fraud;
- (c) any benefits paid by the insurer before a decision of the insurer to cancel the benefit or reduce the amount of the benefit, unless the benefits were obtained by fraud.

“DIVISION 13**Compensation pursuant to other Acts and Plans****“Private insurance claims not affected**

201 This Part does not limit or affect the rights of any person who claims or receives a benefit to claim compensation pursuant to a private insurance scheme.

“Compensation pursuant to *The Workers’ Compensation Act, 1979* or other legislation

202(1) In this section, ‘**other compensation**’ means:

- (a) compensation pursuant to *The Workers’ Compensation Act, 1979* or any other Act, or any legislation of any other jurisdiction, that provides for compensation of persons injured in accidents; or
- (b) compensation pursuant to the *National Defence Act* (Canada) or the *Royal Canadian Mounted Police Act*.

(2) Notwithstanding any other provision of this Part, no benefits are payable to a person as a result of an accident if that person is entitled, with respect to that accident, to other compensation.

(3) Notwithstanding that an insured is receiving other compensation, an insured is entitled to receive a benefit pursuant to Division 4 for an employment the insured held at the date of the accident if:

- (a) the insured sustains a bodily injury caused by a motor vehicle;
- (b) because of the bodily injury mentioned in clause (a), the insured is unable to continue the employment; and

- (c) the insured:
 - (i) is not entitled to other compensation for the loss of that employment; or
 - (ii) the benefits paid to the insured pursuant to that other compensation are less than the maximum yearly insurable earnings set out in section 136.
- (4) A benefit pursuant to Division 4 and provided pursuant to subsection (3):
 - (a) must be calculated in the manner set out in Division 4 and the regulations; and
 - (b) must only compensate an insured for any income loss not compensated for by that other compensation up to the maximum yearly insurable earnings set out in section 136.
- (5) Notwithstanding that an insured's surviving spouse or dependant is receiving other compensation, the surviving spouse or dependant is entitled to receive a death benefit for an employment the insured held at the date of the accident if the surviving spouse or dependant:
 - (a) is not entitled to other compensation for any employment held by the insured; or
 - (b) the other compensation and the benefits paid to the surviving spouse or dependant are less than the death benefits the insured's surviving spouse or dependant would have been entitled to receive pursuant to Division 5.
- (6) A death benefit provided pursuant to subsection (5):
 - (a) must be calculated in the manner set out in Division 5 and the regulations; and
 - (b) must only compensate an insured for any income loss not compensated for by that other compensation up to the maximum benefits allowable pursuant to Division 5.
- (7) If a person is receiving a benefit and because of another bodily injury becomes entitled to compensation pursuant to *The Workers' Compensation Act, 1979* or is receiving compensation pursuant to *The Workers' Compensation Act, 1979* and, because of another bodily injury, the person becomes entitled to a benefit:
 - (a) the insurer and the Workers' Compensation Board shall:
 - (i) make a joint decision distinguishing between the bodily injury attributable to the accident with respect to which a benefit is payable and the bodily injury for which a wage loss benefit is payable pursuant to *The Workers' Compensation Act, 1979*; and
 - (ii) pay compensation in proportion to the attribution of the person's bodily injuries; and

(b) the insurer or the Workers' Compensation Board, as the case may be, shall continue to pay the benefit or the compensation until the joint decision is made.

(8) The insurer may make an agreement with the Workers' Compensation Board respecting the procedure to be followed for handling claims by a person mentioned in subsection (7), and the Workers' Compensation Board has the power to make that agreement.

“Disability payments to reduce income replacement benefit

203 If, as a result of an accident, an insured is entitled to an income replacement benefit and a disability benefit pursuant to the *Canada Pension Plan* or any similar program in a jurisdiction outside Saskatchewan, the insurer shall reduce the income replacement benefit by the amount of the disability benefit payable to the insured.

“Subrogation for compensation pursuant to other Acts

204(1) In this section, **‘compensation legislation’** means:

- (a) *The Workers' Compensation Act, 1979*;
- (b) *The Saskatchewan Hospitalization Act*; or
- (c) *The Saskatchewan Medical Care Insurance Act*.

(2) Subject to section 103, if an insured receives compensation pursuant to compensation legislation, the body authorizing compensation pursuant to compensation legislation:

- (a) is subrogated to the insured's rights; and
- (b) has the same remedies as the insurer to recover the compensation from any person who is not resident in Saskatchewan and is responsible for the accident, or who is liable to pay compensation for bodily injury caused by the non-resident.

**“DIVISION 14
General**

“Substantial compliance with forms and notices

205 Substantial compliance with requirements respecting the content of forms, notices or other documents is sufficient unless the insurer is of the opinion that it would result in unfairness to any person.

“Ex gratia payments

206 If the insurer considers that the payment of a claimant's claim is in the interest of the insurer and the better administration of this Part, the insurer may authorize an *ex gratia* payment to be made to that claimant.

“Immunity

207 No action lies or shall be instituted against the insurer or any director, officer, employee or agent of the insurer where that person is acting pursuant to the authority of this Part or the regulations, for any loss or damage suffered by any person by reason of anything in good faith done, caused or permitted or authorized to be done, attempted to be done or omitted to be done, by any one or more of them pursuant to or in the exercise or supposed exercise of any power conferred by this Part or the regulations or in the carrying out or supposed carrying out of any duty imposed by this Part or the regulations.

“Non-compellability

208(1) The insurer or a director, officer, employee or agent of the insurer is not compellable to give evidence or to produce any documents or other things in a court or in a proceeding of a judicial nature concerning any information that comes to the knowledge of the insurer or a director, officer, employee or agent of the insurer in the exercise of the powers, performance of the duties or carrying out of the functions of the insurer pursuant to this Part.

(2) With respect to the insurer or a director, officer, employee or agent of the insurer, this section does not apply to an appeal pursuant to this Act.

“Agreements

209 The insurer may enter into agreements that the insurer considers necessary or appropriate to advance the purposes of this Part with:

- (a) the Government of Canada or the government of any other province of Canada or a minister, agent or official of that government;
- (b) the government of any other country or any jurisdiction within that country; or
- (c) any person, agency, organization, association, enterprise, institution or body within or outside Saskatchewan.

“Calculation of interest rates

210 If interest is payable pursuant to this Part or the regulations, the interest is to be calculated in accordance with the regulations.

“Service

211 If a claim, notice or other document is required to be given or served pursuant to this Part or the regulations, the claim, notice or document is to be given or served in the prescribed manner.

“Rights on subrogation

212(1) If the insurer or another body is given a right of subrogation pursuant to this Part by reason of paying or becoming liable to pay a benefit or compensation, the insurer or other body is deemed to be an assignee and is subrogated to all rights of recovery of the person to whom or with respect to whom or for whose benefit the benefit or compensation was paid or is payable.

- (2) For the purposes of subsection (1), the insurer or other body may:
- (a) bring an action in its own name to recover the amount of the benefit or compensation paid or payable; or
 - (b) join with the person to whom or with respect to whom or for whose benefit the benefit or compensation was paid or is payable to bring an action in the name of that person for the recovery of damages resulting from the bodily injury caused by a motor vehicle of an insured.

“Inspection of vehicle

213(1) The insurer shall be permitted, at all reasonable times, to inspect any motor vehicle designated in an insured’s owner’s certificate and its equipment.

(2) If a motor vehicle has an onboard computer or sensing diagnostic module installed in the motor vehicle, the insurer is entitled to examine the contents of the onboard computer or sensing diagnostic module and make a copy of any information on the onboard computer or sensing diagnostic module.

“Use of collected information

214 The insurer may use any information collected pursuant to section 213 to determine a claimant’s entitlement to benefits pursuant to this Part.

“Part to prevail

215 This Part and the regulations prevail if there is any conflict or inconsistency between:

- (a) this Part and the regulations; and
- (b) any other Act or regulations.

“Regulations

216(1) The Lieutenant Governor in Council may make regulations:

- (a) defining, enlarging or restricting the meaning of any word or phrase used in this Part but not defined in this Part;
- (b) respecting the procedure applicable to, and the proof required for, claims for benefits;
- (c) respecting the form and content of applications made pursuant to this Part;
- (d) prescribing educational institutions or classes of educational institutions for the purposes of this Part;
- (e) defining catastrophic injuries for the purposes of this Part;
- (f) prescribing practitioners for the purposes of this Part;
- (g) prescribing permanent impairments for the purposes of this Part;
- (h) prescribing specialized equipment for the purposes of this Part;
- (i) prescribing the manner in which the insurer may determine the industrial average wage or the consumer price index;

- (j) prescribing vehicles or classes of vehicles for the purposes of subclause 101(2)(b)(vii);
- (k) respecting structured compensation orders pursuant to section 103;
- (l) prescribing persons or classes of persons as third parties for the purposes of sections 103 and 104;
- (m) respecting the manner in which appeals may be made to the Court of Queen's Bench pursuant to section 107, 109 or 177;
- (n) determining primary employment for the purposes of this Part;
- (o) prescribing other benefits that the insurer shall consider when calculating an income replacement benefit;
- (p) prescribing the manner in which an income replacement benefit is to be calculated pursuant to section 113, 114 or 115, subsection 119(4) or section 122 or 123;
- (q) respecting yearly employment incomes, including determining yearly employment incomes for workers in the employ of another and for self-employed workers, establishing classes of employment and determining the amount of yearly employment income on a weekly or yearly basis;
- (r) prescribing the terms and conditions governing the adjustment or termination of benefits pursuant to Division 4;
- (s) prescribing the terms and conditions governing a substitute worker benefit pursuant to section 116 or 117;
- (t) prescribing the terms and conditions governing a family enterprise benefit pursuant to section 118;
- (u) prescribing the terms and conditions governing a caregiver benefit pursuant to section 119;
- (v) prescribing the terms and conditions governing other weekly benefits pursuant to section 120;
- (w) respecting standards and procedures for determining an employment for an insured pursuant to subsection 119(4) or section 132 or 133, including establishing classes of employment, determining yearly employment incomes on a yearly or weekly basis for each class of employment based on work experience, and establishing the manner of reducing the income of an insured;
- (x) respecting the calculation and payment of a lump sum benefit pursuant to section 128 and, for that purpose, respecting rules to determine when an insured is deemed to have received an income replacement benefit or a substitute worker benefit for 24 consecutive months;

- (y) prescribing the manner in which a benefit shall be reduced pursuant to section 126, 129 or 135;
- (z) respecting the calculation of the net income of an insured, including the amount of the income tax, premiums and contributions mentioned in section 139;
- (aa) respecting the calculation of a death benefit pursuant to section 144 or 145;
- (bb) respecting the manner in which a death benefit may be capitalized and respecting the payment of a capitalized death benefit;
- (cc) respecting the payment of education benefits pursuant to subsection 149(1);
- (dd) prescribing any other benefit to be provided pursuant to section 150, 151 or 162, the terms and conditions under which the insurer may offer these benefits and the maximum amounts that may be provided;
- (ee) respecting the payment of permanent impairment benefits pursuant to section 152;
- (ff) respecting the establishment of a schedule of permanent impairments;
- (gg) prescribing basic activities of daily living;
- (hh) for Divisions 3 and 7, respecting the reimbursement of expenses, including the expenses that are eligible for reimbursement, the terms and conditions under which the insurer may reimburse expenses and the maximum amounts that may be reimbursed;
- (ii) respecting examinations pursuant to section 158, including the content of reports based on examinations;
- (jj) respecting benefits payable pursuant to section 159 or 160;
- (kk) respecting the release of information pursuant to section 165;
- (ll) respecting the reimbursement of the cost of reports pursuant to section 169, including the maximum amount that may be reimbursed;
- (mm) respecting the manner in which the insurer shall determine responsibility for an accident pursuant to section 107, 109, 174 or 175;
- (nn) prescribing the circumstances in which benefits may be subject to garnishment, seizure, attachment, execution and any other process or claim pursuant to subsection 182(1);
- (oo) for the purposes of section 187, authorizing the use of ratios calculated pursuant to section 186;
- (pp) respecting mediation pursuant to Division 11, including prescribing the manner in which mediation must be conducted and prescribing any fees for the purposes of mediation;

- (qq) respecting the transmission of facsimiles of documents to and from the insurer;
 - (rr) prescribing any matter necessary for the purposes of section 202;
 - (ss) respecting the manner in which an insured's debt to the insurer may be deducted from compensation payable to the insured by the insurer;
 - (tt) respecting the calculation of interest pursuant to section 210;
 - (uu) respecting the manner in which a claim, notice or other document is to be served or given pursuant to section 211 and, for that purpose, prescribing when a claim, notice or other document is deemed to have been served or given;
 - (vv) prescribing any other matter or thing that this Part requires to be prescribed in the regulations;
 - (ww) respecting any other matter that the Lieutenant Governor in Council considers necessary to carry out the intent of this Part.
- (2) For the purposes of this Part, the Lieutenant Governor in Council may make regulations:
- (a) adopting, as amended from time to time or otherwise, all or any part of any relevant code or standard;
 - (b) amending for the purposes of this Part any code or standard adopted pursuant to clause (a);
 - (c) requiring compliance with any code or standard adopted pursuant to clause (a).
- (3) A regulation made pursuant to clause (1)(o) may be made retroactive to a day not earlier than the day on which this Part comes into force.

“Transitional - rehabilitation benefits

217(1) Notwithstanding any other Act or law, if, on the day that this section comes into force, an insured was receiving a medical or rehabilitation benefit pursuant to Part VIII of *The Automobile Accident Insurance Act*, as that Act existed on the day before this section comes into force, with respect to an accident that occurred on or after January 1, 1995 but before the day that this Part comes into force, that insured is entitled to rehabilitation benefits in the amount RB calculated in accordance with the following formula:

$$RB = \$5,000,000 - (OPP + A)$$

where:

OPP is the total amount of all benefits paid to or on behalf of that insured pursuant to Divisions 3 and 7 of Part VIII of *The Automobile Accident Insurance Act*, as that Act existed on the day before this section comes into force; and

A is the total amount of all statutory benefits or motor vehicle insurance moneys that have been paid to the insured or that the insured is entitled to receive to cover daily living assistance, medical costs or rehabilitation expenses to lessen the insured's disability pursuant to:

- (a) a judgment arising out of an accident;
- (b) the settlement of an insurance claim arising out of an accident;
- (c) a motor vehicle insurance policy that compensates that insured as a result of the accident; or
- (d) a statutory benefit plan that compensates that insured as a result of the accident.

(2) Notwithstanding any other Act or law, this Part and the regulations made for the purposes of this Part apply, with any necessary modification, to benefits payable pursuant to subsection (1).

“Transitional - income replacement benefits

218 Notwithstanding any other Act or law, if, on the day that this section comes into force, the insurer is paying an income replacement benefit to a beneficiary pursuant to Part VIII of *The Automobile Accident Insurance Act*, as that Act existed on the day before this section comes into force:

- (a) the insurer shall recalculate the beneficiary's net income in the manner set out in section 139;
- (b) the recalculated net income mentioned in clause (a) applies to the beneficiary who is receiving the income replacement benefit; and
- (c) section 139 applies to any recalculation of the beneficiary's income replacement benefit”.

(2) Clause 100(a) is repealed and the following substituted:

“(a) **‘appeal commission’** means the Automobile Injury Appeal Commission established pursuant to Division 11.1;

“(a.1) **‘current studies’** means studies that are part of a program of studies offered by an educational institution at the elementary, secondary or post-secondary level to which, at the date of an accident, a student has been admitted”.

(3) Subsection 107(2) is repealed and the following substituted:

“(2) An insured or insured's surviving spouse or dependant who disagrees with a decision of the insurer pursuant to subsection (1) may appeal that decision to the Court of Queen's Bench or the appeal commission, in the prescribed manner, within 180 days after receiving the insurer's written decision”.

(4) Subsection 109(2) is repealed and the following substituted:

“(2) A person injured or any surviving spouse or dependant of that person who disagrees with a decision of the insurer pursuant to clause (1)(b) may appeal that decision to the Court of Queen’s Bench or to the appeal commission, in the prescribed manner, within 180 days after receiving the insurer’s written decision”.

(5) Section 177 is repealed and the following substituted:**“Beneficiary may appeal decision of insurer**

177 A claimant who disagrees with a determination of the insurer pursuant to section 174 or 175 may appeal the determination to the Court of Queen’s Bench or the appeal commission, in the prescribed manner, within 180 days after receiving written notice of the insurer’s determination”.

(6) Division 11 of Part VIII is repealed and the following substituted:

**“DIVISION 11
Insurer’s Decisions and Appeals**

“Insurer’s decisions final

188 Notwithstanding any other Act or law, any decision made or action taken by the insurer pursuant to this Part is final and conclusive and may be reviewed only in accordance with this Division.

“Insurer to give written reasons

189(1) The insurer shall give every claimant a written decision respecting the claimant’s entitlement to benefits.

(2) At the time the insurer sends a claimant a written decision, it shall give the claimant:

- (a) written reasons for the decision; and
- (b) written notice of the claimant’s right to ask for mediation or to appeal the insurer’s decision pursuant to this Division.

“Mediation

190(1) If a claimant wishes to mediate his or her claim for benefits, the claimant shall provide the insurer with a written notice requesting mediation.

(2) A claimant shall:

- (a) provide the written notice mentioned in subsection (1) to the insurer within 90 days after the date the claimant received the insurer’s written decision pursuant to section 189;
- (b) set out in the written notice the matters that the claimant wishes to mediate; and
- (c) pay any prescribed fee.

(3) Subject to this section, mediation is to be conducted in the prescribed manner.

- (4) The parties shall agree on the appointment of a mediator within 30 days after the insurer receives a written request for mediation.
- (5) If the parties are unable to agree on a mediator within the period mentioned in subsection (4), a mediator must be appointed in the prescribed manner.
- (6) A mediator appointed pursuant to this section shall endeavour to assist the parties to resolve the issues that are the subject of the mediation.
- (7) Except with the written consent of the mediator and all parties to an action who participated in the mediation, the following are not admissible as evidence in any appeal:
 - (a) evidence arising from anything said in the course of the mediation;
 - (b) anything said in the course of the mediation;
 - (c) any oral or written admission or communication made in the course of the mediation.
- (8) When the mediator determines that the mediation is completed, the mediator shall provide each party with a written statement declaring that the mediation is completed.

“Right to appeal

191(1) A claimant may appeal a decision of the insurer pursuant to this Part to either the Court of Queen’s Bench or the appeal commission within the later of:

- (a) 90 days after the date of insurer’s written decision; and
 - (b) if a claimant has requested mediation pursuant to section 190, 60 days after the date the mediator’s written statement pursuant to subsection 190(8) declaring that the mediation is completed.
- (2) If a claimant appeals a decision of the insurer to:
- (a) the Court of Queen’s Bench, no proceeding respecting the matter may be taken before the appeal commission; or
 - (b) the appeal commission, no action or proceeding respecting the matter may be taken before the Court of Queen’s Bench.

“Court rules apply to proceeding before the court

192(1) An appeal to the Court of Queen’s Bench is to be conducted in accordance with *The Queen’s Bench Rules* respecting actions commenced by statement of claim.

- (2) If the insurer is obligated to pay a claimant’s bill of fees and disbursements in an appeal pursuant to this section, the insurer is deemed to be a person charged with the bill and may apply for taxation of the claimant’s bill of fees to a taxing officer in the same manner as costs pursuant to *The Queen’s Bench Rules* or *The Legal Profession Act, 1990*.

“Conduct of appeal before appeal commission

193(1) This section applies to appeals before the appeal commission.

- (2) A claimant may commence an appeal to the appeal commission in the prescribed manner.
- (3) A claimant who commences an appeal to the appeal commission must pay any prescribed fee.
- (4) Subject to this section, an appeal to the appeal commission is to be conducted in the prescribed manner.
- (5) Unless the claimant puts them in issue, the insurer’s finding of facts must be adopted on appeal.
- (6) If the claimant puts the insurer’s finding of facts in issue, the appeal commission may hold a hearing to determine the facts.
- (7) On an appeal, the appeal commission may:
 - (a) set aside, confirm or vary the insurer’s decision; or
 - (b) make any decision that the insurer is authorized to make pursuant to this Part.
- (8) The appeal commission shall provide the claimant and the insurer with written reasons for its decision.
- (9) If the appeal commission determines that the insurer should have paid the claimant benefits other than those which the insurer has been paying, the appeal commission may award interest on the value of the benefits not paid from the date when those benefits should have been paid until the date of the appeal commission’s decision at the rate prescribed in section 210.
- (10) A decision of the appeal commission is binding on the insurer and the claimant and may not be appealed except in accordance with this Division.
- (11) Subject to the regulations, the insurer shall reimburse a claimant who is successful on appeal pursuant to this section or section 194 for the claimant’s costs in the prescribed amount.
- (12) If the insurer is obligated to pay a claimant’s bill of fees and disbursements in an appeal pursuant to this section, the insurer is deemed to be a person charged with the bill and may apply for taxation of the claimant’s bill of fees to a taxing officer in the same manner as costs pursuant to *The Queen’s Bench Rules* or *The Legal Profession Act, 1990*.

“Appeal to the Court of Appeal

194(1) The insurer or the claimant may appeal a decision of the Court of Queen’s Bench or appeal commission to the Court of Appeal on a question of law only.

- (2) An appeal pursuant to this section must be made within 30 days after the date of the decision of the Court of Queen’s Bench or appeal commission or within any further time that a judge of the Court of Appeal may allow.

“Variation of compensation

195(1) A decision of the Court of Queen’s Bench or the appeal commission made pursuant to section 191 or 193 may, at any time, be varied on the application of either the claimant or the insurer.

(2) A party who wishes to have a decision varied shall apply for leave to make an application for a variation to the Court of Queen’s Bench or the appeal commission:

(a) by serving on the other party a copy of the application in the prescribed form; and

(b) by filing the application mentioned in clause (a), together with proof of service, with the Court of Queen’s Bench or the appeal commission, whichever originally decided the matter.

(3) If the Court of Queen’s Bench or the appeal commission is of the opinion that the claimant has established a prima facie case that there has been a material change in the claimant’s circumstances, the Court of Queen’s Bench or the appeal commission may grant leave to make an application for a variation.

(4) The provisions of section 192 or 193, as the case may be, apply, with any necessary modification, to an application for a variation pursuant to this section.

“Appeal does not stay decision

196 An appeal pursuant to this Division respecting a benefit does not stay or affect the validity of the insurer’s decision respecting the payment of a benefit.

“DIVISION 11.1
Appeal Commission

“Appeal commission established

196.1(1) The Automobile Injury Appeal Commission is established.

(2) The appeal commission consists of those persons appointed as members by the Lieutenant Governor in Council.

(3) A member of the appeal commission holds office at pleasure for a term not exceeding three years and until a successor is appointed.

(4) The Lieutenant Governor in Council may designate:

(a) one member of the appeal commission as chairperson; and

(b) one member of the appeal commission as vice-chairperson.

(5) The chairperson shall perform the responsibilities imposed on, and may exercise the powers given to, the chairperson by the Lieutenant Governor in Council, this Act and the regulations.

(6) If the chairperson is absent or unable to act for any reason or if the position of chairperson is vacant, the vice-chairperson shall act as chairperson and, while so acting, shall perform all the responsibilities imposed on, and may exercise all the powers given to, the chairperson.

(7) If, in the circumstances mentioned in subsection (6), the vice-chairperson is absent or unable to act for any reason or if the position of vice-chairperson is vacant, another member of the commission may act as chairperson and, while so acting, shall perform all the responsibilities imposed on, and may exercise all the powers given to, the chairperson.

(8) The appeal commission shall fulfil any responsibilities imposed on, and may exercise any powers given to, the appeal commission by the Lieutenant Governor in Council, this Act and the regulations.

(9) In addition to any powers given to the appeal commission by the Lieutenant Governor in Council, this Act and the regulations, the appeal commission may exercise any other powers that it considers necessary or incidental to carry out the intent of this Part.

“Panels of appeal commission

196.2(1) One or more members of the appeal commission may sit as a panel of the appeal commission and may exercise and perform any powers or duties that the appeal commission is authorized to exercise or perform.

(2) Any number of panels may sit concurrently.

(3) The chairperson shall determine the number of members necessary to constitute a quorum for each appeal.

(4) If only one member of the panel is required to hear a matter, a decision or action of that member is a decision of the appeal commission.

(5) If more than one member of the appeal commission are required to hear a matter, a decision or action of a majority of the members of the panel is a decision of the appeal commission.

(6) In the case of a tie vote, the vote is deemed to be decided in favour of the claimant.

(7) The appeal commission may:

(a) meet at those times and at those places that the chairperson may designate; and

(b) conduct its proceedings in any manner that it considers advisable.

“Evidence

196.3(1) In the case of a hearing or review before the appeal commission, the appeal commission may receive any evidence that, in the opinion of the appeal commission, is relevant to the matter being heard or reviewed.

- (2) The appeal commission is not bound by rules of law concerning evidence.
- (3) In conducting a hearing or review, each member of the appeal commission has the powers of a commissioner pursuant to sections 3 and 4 of *The Public Inquiries Act*.
- (4) The appeal commission shall keep any records that it considers necessary for the proper conduct of its business.

“Rules respecting hearings

- 196.4(1)** Subject to the regulations, the appeal commission may make rules:
- (a) governing the management and conduct of its business and the conduct of the meetings, hearings, reviews and any other proceedings of the appeal commission; and
 - (b) respecting forms, applications and other documents required to be used and the procedures to be followed in the conduct of its affairs.
- (2) The appeal commission shall cause its rules respecting hearings that are made pursuant to subsection (1) to be published in the Gazette.
 - (3) If the requirements of this Act, the regulations and the rules of the appeal commission have been substantially complied with, no order or decision of the appeal commission is to be set aside by reason only of a defect, error, omission or irregularity in any matter associated with a proceeding before the appeal commission.

“Remuneration and employees

- 196.5(1)** The members of the appeal commission are entitled to be paid any remuneration for performing their responsibilities that may be fixed by the Lieutenant Governor in Council.
- (2) The appeal commission may:
 - (a) employ, engage the services of or retain any officers or other employees that are required for the proper conduct of its business; and
 - (b) determine the duties, powers, conditions of employment and remuneration of officers and employees mentioned in clause (a).
 - (3) The appeal commission may:
 - (a) engage the services of any legal counsel, consultant or technical adviser that it considers appropriate to assist the appeal commission in carrying out its responsibilities; and
 - (b) pay any fees and expenses that it considers appropriate to the legal counsel, consultants and technical advisers engaged pursuant to clause (a)”.

(7) Clause 200(b) is repealed and the following substituted:

- “(b) any benefits paid by the insurer before a decision of the appeal commission, Court of Queen’s Bench or the Court of Appeal to cancel the benefit or reduce the amount of the benefit, unless the benefits were obtained by fraud”.

(8) Sections 207 and 208 are repealed and the following substituted:

“Immunity

207 No action lies or shall be instituted against the insurer, any director, officer, employee or agent of the insurer, the appeal commission or any member or employee of the appeal commission where that person is acting pursuant to the authority of this Part or the regulations, for any loss or damage suffered by any person by reason of anything in good faith done, caused or permitted or authorized to be done, attempted to be done or omitted to be done, by any one or more of them pursuant to or in the exercise or supposed exercise of any power conferred by this Part or the regulations or in the carrying out or supposed carrying out of any duty imposed by this Part or the regulations.

“Non-compellability

208(1) The insurer, a director, officer, employee or agent of the insurer, or a member or employee of the appeal commission is not compellable to give evidence or to produce any documents or other things in a court or in a proceeding of a judicial nature concerning any information that comes to the knowledge of the insurer, a director, officer, employee or agent of the insurer or a member or employee of the appeal commission in the exercise of the powers, performance of the duties or carrying out of the functions of the insurer or appeal commission pursuant to this Part.

(2) With respect to the insurer, a director, officer, employee or agent of the insurer or a member or employee of the appeal commission, this section does not apply to an appeal pursuant to this Act”.

(9) Subsection 216(1) is amended:

(a) by repealing clause (m) and substituting the following:

“(m) respecting the manner in which appeals may be made to the Court of Queen’s Bench or appeal commission pursuant to section 107, 109 or 177”; **and**

(b) by adding the following clauses (pp):

“(pp.1) respecting the manner in which appeals to the appeal commission may be commenced and the management and conduct of appeals before the appeal commission, including prescribing a fee to be paid when commencing appeals;

“(pp.2) respecting the manner in which applications to the appeal commission may be made and the management and conduct of applications to the appeal commission, including prescribing a fee to be paid when applying;

“(pp.3) respecting costs that may be awarded pursuant to Division 11”.

(10) The following section is added after section 218:**“Transitional - appeals and commission**

218.1(1) Notwithstanding any other Act or law, in the case of a decision of the insurer that was made pursuant to Division 11 of Part VIII of *The Automobile Accident Insurance Act*, as that Division existed on the day before this section comes into force, and that was not appealed to the Court of Queen’s Bench before the coming into force of this section and for which the time limits for an appeal have not expired:

- (a) the decision may be appealed only in accordance with Division 11;
- (b) Division 11 and the regulations made for the purposes of Division 11 apply, with any necessary modification, to the appeal and Division 11 and the regulations made for the purposes of Division 11 must be followed in the conduct of the appeal; and
- (c) no appeal of the decision may be made pursuant to Division 11 of Part VIII of *The Automobile Accident Insurance Act*, as that Division existed on the day before this section comes into force, and that Division as it existed no longer applies to the appeal of the decision.

(2) In the case of a decision of the insurer with respect to an accident that occurred before the date that this section comes into force that is being appealed to the appeal commission, sections 188 to 196.5 apply, with any necessary modification, as if the accident had occurred on or after the date that this section comes into force”.

Section 101 amended**31 The following subsections are added after subsection 101(1):**

“(1.1) This Part applies to any person who sustained bodily injury caused by a motor vehicle arising out of an accident on or after the date that this Part comes into force and who has not provided the insurer with a tort election in the manner prescribed by Part IV.

“(1.2) A person who is entitled to benefits pursuant to this Part is not entitled to benefits pursuant to Part II other than a death benefit pursuant to Part II relating to the death of an insured”.

Section 102 repealed**32 Section 102 is repealed.**

TRANSITIONAL AND CONSEQUENTIAL

Transitional

33(1) Notwithstanding any other Act or law, if on the day on which section 9 of this Act comes into force the insurer is paying a benefit pursuant to section 25 of *The Automobile Accident Insurance Act*, as that Act existed on the day this Act came into force, the insurer shall calculate and pay a benefit to those persons in the amount and manner prescribed in regulations made pursuant to this section.

(2) The Lieutenant Governor in Council may make regulations:

- (a) prescribing the amount of the benefits payable pursuant to subsection (1);
- (b) prescribing the manner in which a benefit pursuant to subsection (1) is to be calculated.

Transitional - safety ratings

34(1) In this section:

- (a) “**chargeable accident**” means a chargeable accident as defined in section 6 of *The Automobile Accident Insurance Act* as that section existed before the coming into force of section 4 of this Act;
- (b) “**chargeable incident**” means a chargeable incident as defined in section 6 of *The Automobile Accident Insurance Act* as being enacted by section 4 of this Act;
- (c) “**discount**” means a discount as defined in section 6 of *The Automobile Accident Insurance Act* as being enacted by section 4 of this Act;
- (d) “**driver**” means a driver as defined in section 6 of *The Automobile Accident Insurance Act* as being enacted by section 4 of this Act who is a driver on the day on which section 4 of this Act comes into force;
- (e) “**former surcharge**” means a surcharge required to be paid pursuant to section 6 of *The Automobile Accident Insurance Act* as that section existed before the coming into force of section 4 of this Act;
- (f) “**insurer**” means the insurer within the meaning of *The Automobile Accident Insurance Act*;
- (g) “**premium**” means the basic premium set pursuant to subsection 5(2) of *The Automobile Accident Insurance Act*;
- (h) “**safety rating**” means a safety rating as defined in section 6 of *The Automobile Accident Insurance Act* as being enacted by section 4 of this Act;
- (i) “**surcharge**” means a surcharge as defined in section 6 of *The Automobile Accident Insurance Act* as being enacted by section 4 of this Act.

- (2) On the coming into force of section 4 of this Act, the insurer shall:
- (a) determine a safety rating for each driver using accidents and convictions that:
 - (i) occurred in the period commencing on January 1, 1995 and ending on the day before the day on which section 4 of this Act comes into force; and
 - (ii) would be chargeable incidents if the amendments to *The Automobile Accident Insurance Act* as being enacted by section 4 of this Act had been in force on and from January 1, 1995; and
 - (b) based on the driver's safety rating, determine for the driver:
 - (i) the amount of any discount from the premium that the driver is entitled to; or
 - (ii) the amount of any surcharge that the driver must pay.
- (3) The insurer shall determine a safety rating on the same basis and in the same manner that the insurer would have been required to do so if the amendments to *The Automobile Accident Insurance Act* as being enacted by section 4 of this Act had been in force on and from January 1, 1995.
- (4) If the insurer has determined that a driver is entitled to a discount from the premium, the driver is entitled to the discount only when the driver purchases or renews an owner's certificate for a motor vehicle that is prescribed in the regulations made for the purposes of subsection 6(5) of *The Automobile Accident Insurance Act*, as being enacted by section 4 of this Act, or for a motor vehicle that is a member of a class of motor vehicles that is prescribed in those regulations, and those regulations apply for the purposes of this section.
- (5) If the insurer has determined that a driver must pay a surcharge, the insurer shall send a written notice to the driver that indicates the amount of the surcharge.
- (6) Notwithstanding subsections (2) to (5), if, as the result of a determination pursuant to this section, a driver must pay a surcharge and, before section 4 of this Act came into force, the driver had no outstanding former surcharges that he or she was required to pay:
- (a) the driver is not required to pay the surcharge to the insurer at the time of the determination; and
 - (b) the insurer shall not assess any surcharge against the driver until a subsequent chargeable incident is registered against the driver.
- (7) If, as a result of a determination pursuant to this section, a driver must pay a surcharge and, before section 4 of this Act came into force, the driver had outstanding former surcharges that the driver was required to pay, the insurer shall advise the driver in the written notice mentioned in subsection (5) of:
- (a) subject to subsection (8), the amount of the surcharge that must be paid;
 - (b) the time within which the surcharge must be paid; and
 - (c) if the insurer considers it appropriate, the manner in which the surcharge must be paid.

(8) The maximum amount of the surcharge a driver must pay pursuant to subsection (7) is the lesser of:

(a) the amount that the driver would be obligated to pay pursuant to sections 12, 13 and 27.1 of *The Automobile Accident Insurance Regulations*, being Saskatchewan Regulations 2/81, as those regulations existed on the day before the coming into force of section 4 of this Act, based on the number of chargeable accidents and convictions for which the driver has not paid the applicable surcharge; and

(b) the amount of the surcharge determined pursuant to this section.

(9) Subject to subsection (6), on receipt of a written notice sent pursuant to subsection (5), the driver must pay the surcharge in the amount, within the time and in the manner set out in the written notice.

(10) The insurer shall send a written notice pursuant to this section by ordinary mail.

(11) A written notice that is sent pursuant to subsection (10) is deemed to have been received on the tenth day following the day of mailing, unless the person to whom it was mailed establishes that, through no fault of the person, he or she did not receive the written notice or that he or she received it at a later date.

(12) For the purposes of clauses 15(2)(i.1) and 29(7)(a.1) of *The Vehicle Administration Act*, if the insurer determines that a driver must pay a surcharge pursuant to this section:

(a) that surcharge is deemed to be a surcharge determined pursuant to section 6 of *The Automobile Accident Insurance Act*; and

(b) those provisions of *The Vehicle Administration Act* apply to the surcharge as if the surcharge was determined pursuant to section 6 of *The Automobile Accident Insurance Act*.

S.S. 1986, c.H-3.1 section 86 amended

35(1) *The Highway Traffic Act* is amended in the manner set forth in this section.

(2) Section 86 is repealed and the following substituted:

“Liability of operator and owner

86(1) If loss, damage or injury is caused to a person by a motor vehicle, the person driving it at the time is liable for the loss, damage or injury if it was caused by that person’s negligence or improper conduct.

(2) Subject to section 44 of *The Workers’ Compensation Act, 1979*, the owner of the motor vehicle is also liable to the same extent as the operator regardless of whether an action may be brought against the owner pursuant to section 41 of *The Automobile Accident Insurance Act*.

- (3) Subsection (2) does not apply:
- (a) to the owner of the motor vehicle if at the date of the accident the motor vehicle had been:
 - (i) stolen from the owner; or
 - (ii) wrongfully taken out of the owner's possession or out of the possession of a person entrusted by the owner with the motor vehicle's care;
 - (b) to the owner of the motor vehicle if:
 - (i) the owner is a Part VIII beneficiary as defined in *The Automobile Accident Insurance Act*;
 - (ii) the loss is caused by a person other than the owner of the vehicle;
 - (iii) the loss caused to a person is non-economic loss respecting, arising out of or stemming from bodily injury caused by a motor vehicle as defined in *The Automobile Accident Insurance Act*; and
 - (iv) either:
 - (A) the operator of the motor vehicle is convicted of an offence pursuant to paragraph 253(a) or (b), subsection 254(5) or subsection 255(2) or (3) of the *Criminal Code*; or
 - (B) the operator of the motor vehicle:
 - (I) intentionally caused or attempted to cause bodily injury to another person; and
 - (II) the operator is convicted of an offence set out in section 235, 236, 239, 249, 266, 67, 268 or 269 of the *Criminal Code* as a result of the use or operation of a motor vehicle; or
 - (c) to a person who leases agricultural implements to another person".

(3) Section 88 is repealed and the following substituted:

"Limitations on actions

88(1) Subject to subsection (2), no action may be brought against a person for the recovery of damages occasioned by a motor vehicle after:

- (a) the expiration of two years after the date that the damages were sustained; or
- (b) in the case where death is caused, the time limited by *The Fatal Accidents Act*.

(2) If an operator of a motor vehicle involved in an accident is convicted of an offence that involves the motor vehicle and that is mentioned in clause 41(2)(c) or 104(2)(a) of *The Automobile Accident Insurance Act* after the expiration of the two-year limitation period set out in subsection (1), an action for non-economic loss may be brought against that operator to recover damages occasioned by the motor vehicle within one year after the date the operator is convicted of that offence.

(3) The time limits mentioned in this section do not apply with respect to a counter-claim for damages set up by a third party proceeding instituted by a defendant in an action for the recovery of damages occasioned by a motor vehicle”.

S.S. 1986, c.V-2.1 amended

36(1) *The Vehicle Administration Act* is amended in the manner set forth in this section.

(2) The following clause is added after clause 15(2)(i):

“(i.1) he or she is indebted to Saskatchewan Government Insurance in the amount of a surcharge determined pursuant to section 6 of *The Automobile Accident Insurance Act* and the administrator has received notice of the indebtedness”.

(3) The following clause is added after clause 29(7)(a):

“(a.1) is indebted to Saskatchewan Government Insurance in the amount of a surcharge determined pursuant to section 6 of *The Automobile Accident Insurance Act* and the administrator has received notice of the indebtedness”.

COMING INTO FORCE

Coming into force

37(1) Subject to subsection (2), this Act comes into force on proclamation.

(2) Subsection 3(1), sections 4 to 6, and clauses 27(a) to (e) and (g) come into force on assent but are retroactive and deemed to have been in force on and from July 1, 2002.