

2004

CHAPTER 35

An Act to amend *The Automobile Accident Insurance Act*

(Assented to June 17, 2004)

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, 2004*.

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

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

Section 6 amended

3 **Clause 6(1)(a) is amended:**

(a) by striking out “or” after subclause (i); and

(b) by adding the following after subclause (ii):

“(iii) a suspension pursuant to section 91 of *The Highway Traffic Act*; or

“(iv) a suspension or disqualification pursuant to section 78.2 of *The Vehicle Administration Act* that has not been cancelled after a review pursuant to section 78.3 of that Act”.

New section 10.1

4 **Section 10.1 is repealed and the following substituted:**

“Appeal of additional premium to board

10.1(1) A person who has been assessed an amount in addition to the basic premium pursuant to section 8 may appeal the assessment to the board.

(2) An appeal to the board must be made in the manner and within the period set out in the regulations.

(3) Subject to the regulations, if an appeal is made to the board pursuant to this section, the board may confirm, reduce, increase or vary the additional premium assessed.

(4) A review pursuant to this section must be conducted in the manner prescribed in the regulations and in accordance with the terms and conditions prescribed in the regulations.

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

Section 18 amended

5 Subclause 18(1)(b)(ii) is repealed and the following substituted:

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

Section 27 amended

6 Subsection 27(1) is repealed and the following substituted:

“(1) In this Division, ‘**dependant**’, with respect to an insured, means:

(a) 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

(b) 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”.

New section 30.1

7 Section 30.1 is repealed and the following substituted:**“Timing of required adjustments**

30.1(1) Subject to subsection (2), the insurer shall adjust the benefit amounts set out in this Part on January 1 of each year.

(2) The insurer shall adjust the benefits paid to an insured pursuant to sections 22, 22.1, 23, 24, 24.1 and 25 on the anniversary date of the accident.

(3) The amounts as adjusted pursuant to subsections (1) and (2) shall be applied in determining the amount of any benefit”.

Section 30.4 amended

8 The following subsection is added after subsection 30.4(8):

“(9) The insurer shall calculate the benefits payable in section 21, subsection 27(3) and sections 27.3, 27.4 and 29 as of the date of the accident”.

Section 35 amended

9 Section 35 is amended:

(a) **by repealing statutory condition 1 and substituting the following:**

“Meaning of not qualified or authorized driver

1 In these statutory conditions, a driver is deemed not to be qualified or authorized if:

(a) the driver’s ability to apply for or hold a driver’s licence has been cancelled, suspended or revoked by the courts pursuant to the *Criminal Code* or the administrator pursuant to *The Vehicle Administration Act*;

(b) the driver has been disqualified from driving a motor vehicle pursuant to *The Vehicle Administration Act*; or

(c) the driver has not renewed his or her driver’s licence and he or she owes money to the insurer pursuant to subsection 6(6) or section 8 or 80.2 of the Act.

“Prohibitions

1.1 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 or 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 pursuant to *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 pursuant to *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 clauses (a) to (g)”;
and

(b) by adding the following statutory condition after statutory condition 2:

“Suicide

2.1 No benefits are payable to an insured, an insured’s spouse or an insured’s dependant if the insured commits suicide or attempts to commit suicide with a motor vehicle”.

Section 38 amended

10 The following clause is added after clause 38(3)(b):

“(b.1) caused by or to a motor vehicle in consequence of the operation of a motor vehicle on a surface other than a highway in a test or exhibition of speed, skill, endurance or power”.

Section 39 amended

11 Section 39 is amended:

(a) by adding the following statutory condition after statutory condition 1:

“Qualified or authorized

1.1 For the purposes of statutory condition 2, a driver is deemed not to be qualified or authorized if:

(a) his or her ability to apply for or hold a driver’s licence has been cancelled, suspended or revoked by the courts pursuant to the *Criminal Code* or the administrator pursuant to *The Vehicle Administration Act*;

(b) the driver has been disqualified from driving a motor vehicle pursuant to *The Vehicle Administration Act*; or

(c) the driver has not renewed his or her driver’s licence and he or she owes money to the insurer pursuant to subsection 6(6) or section 8 or 80.2 of the Act”;

(b) by repealing clause (1)(b) of statutory condition 2 and substituting the following:

“(b) while he or she is not for the time being qualified or authorized by law to drive or operate a motor vehicle”; **and**

(c) by repealing clause (2)(b) of statutory condition 2 and substituting the following:

“(b) by a person who is not for the time being qualified or authorized by law to drive or operate a motor vehicle”.

Section 40 amended

12 Clause 40(b) is repealed and the following substituted:

“(b) **‘non-economic loss’** means any non-pecuniary loss respecting, arising out of or stemming from bodily injury caused by a motor vehicle arising out of an accident less the amount of any benefit received by an insured pursuant to section 29”.

Section 40.2 amended

13 Subsection 40.2(4) is amended by striking out “section 41” and substituting “sections 41 and 41.1”.

Section 42 amended

14(1) The following clause is added after clause 42(1)(h):

“(h.1) for loss or damage caused by or to a motor vehicle in consequence of the operation of a motor vehicle on a surface other than a highway in a test or exhibition of speed, endurance, skill or power”.

(2) Subsection 42(2) is repealed and the following substituted:

“(2) The insurer’s liability pursuant to subsection (1) for loss or damage arising out of an accident is the positive amount L, if any, calculated in accordance with the following formula:

$$L = \$200,000 - N$$

where N is the amount the insurer is obligated to pay pursuant to section 51.1”.

Section 48 amended**15 Section 48 is amended:****(a) by adding the following statutory conditions after statutory condition 1:****“Intentional Acts**

1.1 A person insured by the owner’s certificate shall not wilfully cause or attempt to cause damage through the operation of a motor vehicle.

“Qualified or authorized

1.2 For the purposes of statutory condition 2, a driver is deemed not to be qualified or authorized if:

(a) his or her ability to apply for or hold a driver’s licence has been cancelled, suspended or revoked by the courts pursuant to the *Criminal Code* or the administrator pursuant to *The Vehicle Administration Act*;

(b) the driver has been disqualified from driving a motor vehicle pursuant to *The Vehicle Administration Act*; or

(c) the driver has not renewed his or her driver’s licence and he or she owes money to the insurer pursuant to subsection 6(6) or section 8 or 80.2 of the Act”;

(b) by repealing clause (1)(b) of statutory condition 2 and substituting the following:

“(b) while he or she is not for the time being qualified or authorized by law to drive or operate a motor vehicle”; **and**

(c) by repealing clause (2)(b) of statutory condition 2 and substituting the following:

“(b) by a person who is not for the time being qualified or authorized by law to drive or operate a motor vehicle”.

Section 52 amended**16 Clause 52(2)(c) is repealed and the following substituted:**

“(c) a motor vehicle that is exempt from the obligation to:

(i) obtain a certificate of registration pursuant to *The Highway Traffic Act*; or

(ii) insure pursuant to this Act”.

Section 58 amended

17 The following subsections are added after subsection 58(3):

“(3.1) The insurer’s liability pursuant to section 51, 54 or 55 with respect to loss or damage to property includes only that amount of the loss or damage to the insured’s property that is not paid or payable to the insured pursuant to Part III.

“(3.2) Subject to subsection (3.3), no amount shall be sought pursuant to section 51, 54 or 55, and no amount sought pursuant to any of those sections is payable, with respect to loss or damage to property owned by one of the following:

- (a) the Government of Canada;
- (b) the Government of Saskatchewan;
- (c) a Crown corporation established by either of the governments mentioned in clauses (a) and (b);
- (d) a municipality;
- (e) any other prescribed corporation.

“(3.3) Subsection (3.2) does not apply if the property mentioned in that section is insured pursuant to this Act”.

Section 68 amended

18(1) Subclause 68(1)(c)(i) is repealed and the following substituted:

“(i) that causes:

- (A) bodily injury to or the death of 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; or
- (B) property damage arising out of physical contact of the motor vehicle”.

(2) The following clause is added after clause 68(3)(b):

“(b.1) involves a motor vehicle for which no certificate of registration has been issued pursuant to *The Vehicle Administration Act*”.

Section 80.2 amended

19(1) Subsection 80.2(1) is amended by striking out “Part III or IV” and substituting “Part II, III or IV”.**(2) Clause 80.2(2)(b) is amended by striking out “Part III or IV” and substituting “Part II, III or IV”.**

Section 81 amended

20(1) The following clauses are added after clause 81(1)(e.7):

“(e.71) respecting the discounts from the basic premium or additions to the basic premium that are applicable to commercial motor vehicles registered pursuant to the International Registration Plan and authorizing the insurer to calculate those discounts or additions;

“(e.8) respecting the manner in which and the period within which an appeal may be made pursuant to section 10.1;

“(e.81) prescribing the board’s authority to review the insurer’s decision pursuant to section 8;

“(e.9) prescribing the manner in which and the terms and conditions under which a review pursuant to section 10.1 may be conducted”.

(2) Subsection 81(2) is amended by striking out “clause (1)(ii)” and substituting “subsection (1)”.

Section 101 amended

21 Subsection 101(1) is amended by striking out “sections 222 and 223” and substituting “sections 218 and 218.1”.

Section 104 amended

22 Clause 104(1)(b) is repealed and the following substituted:

“(b) **‘non-economic loss’** means any non-pecuniary loss respecting, arising out of or stemming from bodily injury caused by a motor vehicle arising out of an accident less any benefits provided pursuant to this Part for permanent impairment to an insured who is bringing an action pursuant to this section to recover non-economic loss”.

New section 108

23 Section 108 is repealed and the following substituted:

“Benefits for Saskatchewan residents and, if in a reciprocity agreement, for non-Saskatchewan residents

108(1) An insured who is resident in Saskatchewan at the date of the accident, and the insured’s surviving spouse or dependant, are 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) An injured person who is not a resident of Saskatchewan and who is injured in Saskatchewan in a motor vehicle registered in Saskatchewan is deemed to be a resident of Saskatchewan, unless there is an agreement between the insurer and a government or agency of the government of the jurisdiction where the injured person resides that provides otherwise”.

New section 109.1

24 The following section is added after section 109:

“Right to carry on action outside Saskatchewan continued in certain circumstances

109.1 Subject to the insurer’s right of subrogation, if an insured, an insured’s surviving spouse or a dependant is entitled to any benefits respecting an accident that occurred outside Saskatchewan, the insured, insured’s surviving spouse or dependant may exercise any right or remedy that he or she has pursuant to the law of the place where the accident occurred for compensation in excess of the benefits he or she is entitled to receive pursuant to this Part”.

Section 140 amended**25 The following subsections are added after subsection 140(4):**

“(5) Notwithstanding subsection (4), if an insured suffers a relapse on or after the 180th day following the accident and before the relapse had not been receiving an income replacement benefit pursuant to subsection 113(4), (5), (6), (7) or (8), the insured is entitled to the greater of:

- (a) an income replacement benefit calculated on the basis of the yearly employment income of the insured at the date of the relapse; and
- (b) an income replacement benefit calculated in the manner set out in:
 - (i) subsection 113(5); or
 - (ii) if the insured held a seasonal employment, subsection 113(6) or (7) as the circumstances require.

“(6) If an insured receives an income replacement benefit at the date of relapse pursuant to clause (5)(a), the insurer shall adjust the insured’s income pursuant to subsection 113(4) on the 180th day after the date of relapse”.

Section 146 amended**26 The following subsections are added after subsection 146(3):**

“(4) Notwithstanding subsections (1) and (3) but subject to subsection (5), if the insurer is required to pay a death benefit to a surviving spouse or a dependant pursuant to section 202, the insurer may elect not to capitalize the benefit.

“(5) If a surviving spouse or a dependant waives his or her rights pursuant to section 202, the insurer shall pay that person a lump sum benefit of \$12,078 in lieu of any benefit that would otherwise be payable to that person pursuant to that section”.

New section 195.1**27 The following section is added after section 195:****“Dismissal of appeal for want of prosecution of appeal**

195.1(1) Subject to subsection (2), if an appeal before the appeal commission is not set down for hearing within six months after the application for appeal has been filed, the appeal commission may dismiss the appeal as abandoned.

(2) Before dismissing an appeal pursuant to subsection (1), the appeal commission shall notify the parties in writing that the appeal shall be dismissed unless the parties within 15 days after the date the notice is served on the parties apply to the appeal commission to show cause why the appeal should not be dismissed.

(3) If an appeal has been dismissed by the appeal commission pursuant to this section, any money paid by the claimant to initiate the appeal shall be refunded”.

Section 202 amended**28 The following subsections are added after subsection 202(5):**

“(5.1) If an insured dies in an accident leaving no spouse or dependant, the insurer shall pay to the insured’s estate, parents or non-dependent children, as the circumstances require, the benefits the insured’s estate, parents or non-dependent children would be entitled to receive pursuant to section 147 if:

- (a) no other compensation is provided for the accident; or
- (b) the other compensation provided is less than the benefits that otherwise would be payable pursuant to section 147.

“(5.2) Notwithstanding any other provision of this Act or any other Act or law, the insurer is required to provide benefits pursuant to subsection (5.1) only in an amount that will compensate the insured’s estate, parents and non-dependent children, as the circumstances require, for any loss not compensated by the other compensation and only to the maximum amount prescribed in section 147”.

Section 216 amended**29 Subsection 216(3) is amended by striking out “clause (1)(o)” and substituting “clause (1)(o) or (x)”.****Coming into force****30 This Act comes into force on proclamation.**

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