

BILL

No. 184

An Act to amend *The Automobile Accident Insurance Act*

(Assented to _____)

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 (Motorcycles) Amendment Act, 2015*.

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 2 amended

3(1) Subsection 2(1) is amended:

- (a) in clause (e) by adding “, II.1” after “Part II”;
- (b) by repealing clause (f) and substituting the following:
“(f) ‘board’ means the Highway Traffic Board continued pursuant to *The Traffic Safety Act*”;
- (c) in clause (h) by adding “, 35.11(2)” after “subsections 20(3)”;
- (d) by repealing subclause (v)(i) and substituting the following:
“(i) a person to whom or with respect to whom benefits are payable pursuant to Part II, II.1 or VIII, as the case may be”;
- (e) by repealing paragraph (x)(ii)(B) and substituting:
“(B) ending on the date set out on the certificate”;
- (f) by adding the following clauses after clause (aa):
“(aa.1) ‘motorcycle’ means a motorcycle as defined in the regulations;
“(aa.2) ‘motorcycle election’ means a written election made by a Saskatchewan resident that complies with the requirements of Part II.1”;
- (g) by adding the following clauses after clause (ff):
“(ff.01) ‘Part II beneficiary’ means an individual who has provided a tort election to the insurer pursuant to sections 40.2 and 40.3;
“(ff.02) ‘Part II.1 beneficiary’ means an individual who has provided a motorcycle election to the insurer pursuant to section 35.12”; and

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

“(ff.1) **‘Part VIII beneficiary’** means an individual 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”.

(2) Subsections 2(2) to (4) are repealed.

Section 7.2 amended

4 Subsections 7.2(7) to (11) are repealed and the following substituted:

“(7) On receipt of a notice of dispute pursuant to subsection (6), the board shall contact the driver to schedule a hearing.

“(8) The board shall schedule a hearing and send notices to the driver in the prescribed manner.

“(9) If the driver who made the appeal fails to attend the hearing on the date scheduled, the board may, on evidence acceptable to the board that the driver received notice of the hearing, proceed with the hearing in the absence of the driver”.

Section 10 repealed

5 Section 10 is repealed.

Section 12 amended

6 Subsection 12(1.2) is repealed and the following substituted:

“(1.2) Notwithstanding any other Part of this Act or any other Act, a certificate of insurance issued pursuant to this Act for a snowmobile does not provide coverage pursuant to Part III”.

Section 17 amended

7 Subsection 17(2) is repealed and the following substituted:

“(2) Notwithstanding any other Part of this Act or any other Act, a certificate of insurance issued in conjunction with a permit issued pursuant to *The Traffic Safety Act*, or any other authority, for a snowmobile does not provide coverage pursuant to Part III”.

Section 20 amended

8 Subsections 20(1) and (2) are repealed and the following substituted:

“(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) provided to the insurer a tort election pursuant to sections 40.2 and 40.3.

“(2) A person who is entitled to benefits pursuant to this Part is not entitled to benefits pursuant to Part II.1 or Part VIII other than:

- (a) a death benefit pursuant to Part II.1 relating to the death of a Part II.1 beneficiary; and
- (b) a death benefit pursuant to Part VIII relating to the death of a Part VIII beneficiary”.

New Part II.1

9 The following Part is added after Part II:

“PART II.1

Motorcycle Bodily Injury Benefits

DIVISION 1

Application of Part and Motorcycle Election

“Interpretation

35.1 In this Part:

- (a) **‘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 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 an accident;
- (b) **‘motorcycle owner’** means an individual who is issued an owner’s certificate with respect to a motorcycle pursuant to this Act and who is the holder of a driver’s licence with a prescribed M, M1, M2 or 6 endorsement;
- (c) **‘single vehicle accident’** means an accident with respect to which:
 - (i) no other vehicle is involved in the accident; or
 - (ii) the name of the operator of the motor vehicle involved in or responsible for the accident is not known or ascertainable.

“Application of Part

35.11(1) This Part applies to a motorcycle owner who, on or after the date on which this Part comes into force:

- (a) has 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;

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- (b) has provided to the insurer a motorcycle election pursuant to section 35.12;
 - (c) has sustained bodily injury while operating his or her motorcycle for which an election pursuant to section 35.12 has been provided; and
 - (d) is:
 - (i) 50% or more at fault for the accident; or
 - (ii) involved in a single vehicle accident.
- (2) Notwithstanding subsection (1), this Part does not apply to bodily injury caused by a motor vehicle arising out of an accident if the bodily injury:
- (a) is caused while the motorcycle 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 of the motorcycle and that is mounted on or attached to the motorcycle; or
 - (ii) by any other prescribed vehicle;
 - (c) is caused by the autonomous act of an animal that is part of the motorcycle's load;
 - (d) is caused by an action performed by the motorcycle owner in connection with the maintenance, repair, alteration or improvement of the motorcycle;
 - (e) is caused while putting a load on or taking a load off the motorcycle; or
 - (f) is caused as the result of a 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) A motorcycle owner who is entitled to benefits pursuant to this Part is not entitled to benefits pursuant to Part II or Part VIII other than a death benefit relating to the death of an insured.
- (4) Clause (2)(b) does not apply if a motor vehicle in motion is involved in the accident.

“Motorcycle election

- 35.12(1)** A motorcycle owner may provide the insurer with a motorcycle election.
- (2) A motorcycle owner must make a separate motorcycle election for each motorcycle owned by the motorcycle owner.
 - (3) Subject to subsections (5) and (6), a motorcycle election must be made personally by the motorcycle owner who intends to be bound by the election.
 - (4) A motorcycle owner may not make a motorcycle election pursuant to subsection (1) if:
 - (a) he or she has made a tort election pursuant to sections 40.2 and 40.3;
 - (b) his or her motorcycle is registered in more than one name; or

- (c) the motorcycle that would be the subject of the motorcycle election is of a type, size or class of motor vehicle, or is owned by a class of persons, that is prohibited in the regulations from providing a motorcycle election.
- (5) If a motorcycle owner is under the age of majority, a motorcycle election for that motorcycle owner may only be made by his or her parent or legal custodian.
- (6) If a motorcycle owner has a personal guardian appointed or continued pursuant to *The Public Guardian and Trustee Act* or *The Adult Guardianship and Co-decision-making Act*, a motorcycle election for that motorcycle owner may only be made by his or her personal guardian.
- (7) A motorcycle election remains in effect until the earliest of the following:
- (a) the motorcycle election is revoked;
 - (b) the owner's certificate in which the motorcycle is designated is suspended, cancelled or revoked;
 - (c) the owner's certificate in which the motorcycle is designated expires;
 - (d) the owner's certificate in which the motorcycle is designated is void or invalid.
- (8) Notwithstanding subsection (7), the insured is deemed to have personally provided a motorcycle election pursuant to this section if, before the expiry of an owner's certificate for the motorcycle:
- (a) an insured, or an agent of the insured, renews his or her owner's certificate for that motorcycle; and
 - (b) at the time of renewal, the insured does not provide the insurer with a revocation of his or her motorcycle election.
- (9) A motorcycle owner may at any time revoke his or her motorcycle election pursuant to section 40.4.
- (10) A motorcycle election must be:
- (a) made:
 - (i) in writing;
 - (ii) in person at any office of the insurer or licence issuer; and
 - (iii) in the form provided by the insurer; or
 - (b) made in a prescribed manner.
- (11) A motorcycle election is only effective as at the date and time it is received by the insurer.
- (12) A motorcycle election applies only with respect to accidents that occur after the date on which the insurer receives the motorcycle election.

“Meaning of motorcycle election

35.13 If a motorcycle election is provided pursuant to section 35.12, the motorcycle owner:

- (a) is entitled to coverage pursuant to this Part; and
- (b) is deemed to have waived his or her right to obtain benefits pursuant to Part VIII of the Act.

“DIVISION 2

General and Rehabilitation Benefits

“Medical or rehabilitation benefits

35.14(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 \$25,834 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 \$193,762.

“DIVISION 3

Weekly Benefits

“Total disability for employed persons within 104 weeks

35.2(1) Subject to section 35.26, 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 the weekly benefit payable pursuant to this section is \$388.

(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

35.21(1) Subject to section 35.26, 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 the weekly benefit payable pursuant to this section is \$194.

(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

35.22(1) Subject to section 35.26, 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 35.2 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 the weekly benefit payable pursuant to this section is \$388.

“Total disability for homemaker within 104 weeks

35.23(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 the weekly benefit payable pursuant to this section is \$388.

“Partial disability for homemaker within 104 weeks

35.24(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 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 the weekly benefit payable pursuant to this section is \$194.

“Confinement benefit

- 35.25(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 35.2 or 35.23;
 - (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 the weekly benefit payable pursuant to this section is \$194.

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

- 35.26(1)** This section applies if the sum of weekly benefits otherwise payable to an insured pursuant to section 35.2, 35.21 or 35.22 and any other accident or disability benefits payable to the insured under a contract of insurance with respect to an accident exceeds the insured’s average yearly income in the 12 months preceding the accident.
- (2) Notwithstanding sections 35.2, 35.21 and 35.22, in the circumstances mentioned in subsection (1), the insurer is only liable, pursuant to section 35.2, 35.21 or 35.22, to pay a reduced weekly benefit to an insured in the amount RWB as calculated in accordance with the following formula:

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

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 35.2, 35.21 or 35.22 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 4

Death and Funeral Benefits

“Weekly death benefits

35.3(1) 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.

(2) The minimum death benefit a spouse is entitled to receive pursuant to this section is \$58,128.

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

(4) Subject to subsection (7), 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.

(5) The insurer shall pay the weekly death benefit set out in subsection (4) to the spouse.

(6) Notwithstanding subsection (5), 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.

(7) The weekly death benefit mentioned in subsection (4) is payable until whichever of the following occurs first:

(a) the dependant reaches 21 years of age;

(b) the dependant dies.

“Weekly death benefits—dependant

35.31(1) If both of a dependant’s parents die in an accident, the dependant is entitled to the weekly death benefit mentioned in section 35.3 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 35.3 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 35.3(1), the dependant is entitled to the weekly death benefit mentioned in subsection 35.3(1) as if the dependant were the spouse of the insured.

(4) In the case of a person who is a dependant, 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

35.32(1) A spouse or a dependant who is entitled to a weekly death benefit pursuant to section 35.3 or 35.31 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 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

35.33(1) If an insured dies leaving no spouse or dependant, the insured’s estate is entitled to a lump sum death benefit of \$12,917.

(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 35.3 and 35.31, there is deemed to be no spouse or dependant.

“Funeral benefit

35.34 The insured’s estate is entitled to a lump sum benefit in the amount of \$6,459 for the insured’s funeral.

“DIVISION 5

Permanent Impairment Benefits

“Permanent impairment benefits

35.4(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

35.41(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

35.5(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:

$$PI = \$12,917 \times P$$

where P is the percentage determined pursuant to section 35.41.

(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:

$$CPI = \$167,928 \times P$$

where P is the percentage determined pursuant to section 35.41.

“DIVISION 6

Claims

“Application for benefits

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

“Time limits for applying

35.61(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 on which the claimant reaches 18 years of age.

(4) The time limits set out in this section are postponed for a claimant who lacks the capacity to manage his or her estate until the claimant:

(a) has capacity 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

35.62(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.

“Examination by practitioner

35.63(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) 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.

(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.

“Report of examination

35.64(1) A practitioner who examines an insured at the request of the insurer pursuant to section 35.63 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 35.63, 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.

“Proof of salary

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

“Report of accident

35.66 Within six days after receiving a written request from the insurer, a practitioner or the person operating the hospital that has either been consulted by an insured or that has treated 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.

“Claimant to advise of changes

35.67(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

35.68 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 7

**Payment of Benefits and
General Matters Respecting Part II.1 Benefits**

“No benefits for suicide

35.7 No benefits are payable to the insured, or the insured’s spouse or dependant, if the insured commits suicide or attempts to commit suicide with a motorcycle.

“No Part II.1 benefits to occupants of stolen motor vehicles

35.71(1) Notwithstanding any other provision of this Act, no occupant of a stolen motor vehicle involved in an accident, and no spouse or dependant of the occupant of the stolen motor vehicle claiming through, on behalf of or as a dependant of the occupant of the stolen motor vehicle, is entitled to any benefits pursuant to this Part with respect to the accident.

(2) Notwithstanding any other provision of this Part, the insurer may withhold the payment of any benefits pursuant to this Part with respect to an accident to an insured, the spouse of an insured or a dependant of an insured if, in connection with the accident, the insured has been charged with an offence mentioned in clause 2(1)(cc.1) until the disposition of that charge.

(3) If an amount has been withheld pursuant to subsection (2) and the insured is not convicted of an offence mentioned in clause 2(1)(cc.1), the insurer shall pay to the insured, the insured’s spouse or the insured’s dependants:

- (a) the withheld benefits to which that insured is entitled; and
- (b) interest on the withheld benefits at the pre-judgment interest rate established pursuant to *The Pre-judgment Interest Act*.

“When Division 3 benefits not payable

35.72(1) Notwithstanding any other provision of this Part, no insured is entitled to any benefit pursuant to Division 3 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 the regulations, 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 3 in the following circumstances:

- (a) the insured is more than 50% responsible for the accident; and
- (b) either:
 - (i) the insured:
 - (A) has been convicted of:
 - (I) an offence pursuant to paragraph 253(1)(a) or (b), subsection 254(5) or subsection 255(2) or (3) of the the *Criminal Code*; 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); and
 - (B) on at least one other occasion within the five years before the accident, has been convicted of an offence listed in this clause as a result of the operation of a motor vehicle; or

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- (ii) the insured 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

35.73 Notwithstanding any other provision of this Part, an insured is not entitled to any lump sum benefit for a permanent impairment pursuant to Division 5 to which the insured would otherwise be entitled if the insured is more than 50% responsible for the accident and:

- (a) the insured, at the time of the accident:
 - (i) was the operator or had the care and control of a motor vehicle involved in the accident; and
 - (ii) 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;
- (b) the insured was convicted, with respect to the accident, of:
 - (i) an offence pursuant to paragraph 253(1)(a) or (b), subsection 254(5) or subsection 255(2) or (3) of the *Criminal Code*; or
 - (ii) an offence pursuant to a law of a state of the United States of America substantially similar to an offence mentioned in subclause (i); or
- (c) the insured was the operator of a motor vehicle involved in the accident who:
 - (i) intentionally caused or attempted to cause bodily injury to another person; and
 - (ii) was convicted of:
 - (A) 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
 - (B) an offence pursuant to a law of a state of the United States of America substantially similar to an offence mentioned in paragraph (A).

“Proof of conviction

35.74 For the purposes of sections 35.71, 35.72 and 35.73, 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 35.71, 35.72 or 35.73 is admissible in evidence as proof, in the absence of evidence to the contrary, of the conviction of the insured without proof of the signature or official character of the person appearing to have signed the certificate.

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

35.75 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.

“Payment of benefits

35.76(1) Notwithstanding any other provision to the contrary, a beneficiary is not entitled to receive a benefit pursuant to section 35.2, 35.21, 35.23, 35.24 or 35.25 for the first seven days after the accident.

(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 pay a weekly benefit pursuant to section 35.2, 35.21, 35.22, 35.23, 35.24 or 35.25 to an insured once every 14 days.

(4) 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.

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- (5) The insurer may request that a beneficiary provide it with receipts before paying a benefit and, if the insurer makes that request, a beneficiary is eligible to receive the benefit only after receipts that are satisfactory to the insurer are submitted.
 - (6) The insurer shall pay a benefit related to reimbursing expenses to a beneficiary.
 - (7) 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.
 - (8) 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.
 - (9) 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.
 - (10) The insurer shall calculate the benefits payable pursuant to Divisions 2, 4 and 5 as of the date of the accident.

“When payment for catastrophic injury may be made

35.761(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 calculated in accordance with the regulations.

“Accidents outside Saskatchewan

35.77 If an insured or insured's 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 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

35.78(1) If an insured or insured's 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) For the purpose of applying *The Limitations Act* to an action pursuant to this section, the day on which the act or omission on which the claim is based takes place is the day on which the insurer makes the first benefit payment to the insured or to the insured's spouse or dependant.

“No enforcement

35.79(1) Subject to section 11.1, the regulations and *The Enforcement of Maintenance Orders Act, 1997*, benefits, other than weekly benefits paid pursuant to section 35.2, 35.21, 35.22, 35.23, 35.24 or 35.25, 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 35.2, 35.21, 35.22, 35.23, 35.24 or 35.25, may not assign the benefits to another person, and any purported assignment is void.

“DIVISION 8

Indexation of Benefits

“Interpretation of Division

35.8(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 on which 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

35.81(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 amounts as adjusted pursuant to subsection (1) must be applied in determining the amount of any benefit.

“Calculation of adjustment

35.82(1) Subject to section 35.83, 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:

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

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

35.83(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) If authorized by the regulations, the insurer may use the ratio calculated pursuant to section 35.82 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 9

Recovery of Benefits

“Overpayment

35.84(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

35.85 For the purpose of applying *The Limitations Act* to an action to recover an overpayment, the day on which the act or omission on which the claim is based takes place is:

- (a) the day on which the amount of the overpayment was paid to the person;
- (b) if the amount of the overpayment was paid as a result of fraud, the day on which 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, the day on which the insurer knows about or first discovers an act or omission of that person relating to the prevention or obstruction.

“Cancellation of overpayment

35.86 The insurer may cancel all or any part of an overpayment if the insurer considers that it is not recoverable.

“Certain amounts not overpayments

35.87 Notwithstanding section 35.84, 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 a court 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 10

Compensation Pursuant to Other Plans

“Private insurance claims not affected

35.9 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.

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

35.91(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, 2013* 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 35.2, 35.21 or 35.22 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 35.2, 35.21 or 35.22 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.

“Subrogation for compensation pursuant to other Acts

35.92(1) In this section, ‘**compensation legislation**’ means:

- (a) *The Workers’ Compensation Act, 2013*;
- (b) *The Saskatchewan Medical Care Insurance Act*; or
- (c) *The Health Administration Act*.

(2) Subject to section 41.12, 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 11**General****“Substantial compliance with forms and notices**

35.93 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.

“Rights on subrogation

35.94(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.

“Non-compellability

35.95(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, a director, officer, employee or agent of the insurer, this section does not apply to an action regarding the entitlement to benefits pursuant to this Part”.

New section 40

10 Section 40 is repealed and the following substituted:

“Interpretation of Part

40 In this Part and section 81, ‘**third party**’ means:

(a) a motor vehicle manufacturer;

(b) a maker or supplier of motor vehicle parts;

(c) a person engaged in the business of selling motor vehicles;

(d) a person engaged in the business of, or whose business includes, a motor vehicle garage, repair shop or service station;

(e) the holder of a restaurant permit or a tavern permit issued pursuant to *The Alcohol and Gaming Regulation Act, 1997* authorizing the permit holder to deal in beverage alcohol; or

(f) any other prescribed person or member of a prescribed class of persons”.

Section 40.1 amended

11 Section 40.1 is amended in the portion preceding clause (a) by striking out “subject to this Part and Part VIII” and substituting “subject to Part II.1, this Part, Part VI and Part VIII”.

Section 40.2 amended

12 Clause 40.2(1)(b) is repealed and the following substituted:

“(b) waive the resident’s right to obtain benefits pursuant to Part II.1 or Part VIII”.

New section 40.4

13 Section 40.4 is repealed and the following substituted:

“Change in coverage

40.4(1) In this section and section 81, ‘**change in coverage**’ means:

- (a) the making of a tort election;
- (b) the making of a motorcycle election; or
- (c) the revocation of either a tort election or a motorcycle election.

(2) Any change in coverage pursuant to this Act must be:

- (a) in writing;
- (b) in a 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 sections 35.12, 40.2 and 40.3 apply, with any necessary modification, to a change in coverage”.

New Divisions 3 and 3.1 of Part IV

14 Division 3 of Part IV is repealed and the following substituted:

“DIVISION 3

Tort Actions Available to Part II Beneficiaries

“Tort actions available to Part II beneficiary

41(1) In this section:

- (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 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 paid or payable pursuant to section 29 for permanent impairment to an insured who is bringing an action pursuant to this Division.

(2) Subject to subsections (3) and (4), a Part II beneficiary may bring an action in a court for bodily injury arising out of the use or operation of a motor vehicle for economic loss and non-economic loss.

(3) Subject to subsection (4), no action shall be brought by a Part II beneficiary for bodily injury to any person respecting, arising out of or stemming from bodily injury caused by a motor vehicle arising out of an accident against a Saskatchewan resident who:

- (a) is a Part II.1 beneficiary or a Part VIII beneficiary; and
- (b) is the owner, operator or passenger of the motor vehicle involved in the accident.

(4) A Part II beneficiary may bring an action against a Part II.1 beneficiary or Part VIII beneficiary mentioned in subsection (3) for:

- (a) economic loss in excess of insurance money paid or to be paid pursuant to section 51.1; and
- (b) non-economic loss, but only if:
 - (i) the loss is caused by the Part II.1 beneficiary or 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 the Part II.1 beneficiary or 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 actions available to Part II beneficiary

41.1(1) The following rules apply to an action pursuant to 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 or 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 insurance scheme that 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 sections 41 and 51.1, the court shall, when awarding damages, set out under separate headings:

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

“DIVISION 3.1

Tort Actions Available to Part II.1 Beneficiary

“Tort actions for economic loss

41.12(1) In this section, ‘**economic loss**’ means the following losses resulting from bodily injury caused by a motor vehicle that arise out of an accident:

- (a) in the case of an insured who is entitled to a benefit pursuant to Division 3 of Part II.1 any past or future income loss in excess of the weekly benefits paid or payable to the insured;
- (b) 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 spouse or dependant in excess of the benefits paid or payable pursuant to Division 4 of Part II.1;
- (c) in the case of an insured who is entitled to any benefit pursuant to Division 2 of Part II.1, any past and future loss suffered by the insured in excess of the benefits to which the insured is entitled; or
- (d) in the case of an insured who is entitled to compensation for loss of earnings pursuant to *The Workers’ Compensation Act, 2013* or any other Act, or any legislation of any other jurisdiction, that relates to the compensation of individuals injured in accidents:
 - (i) any past or future income loss suffered by the insured in excess of the benefits paid or payable pursuant to section 37 of *The Workers’ Compensation Act, 2013*, 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;

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- (ii) any past and future loss suffered by the insured's spouse or dependant in excess of the benefits paid or payable pursuant to sections 80, 81, 83, 85 and 86 of *The Workers' Compensation Act, 2013*, 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
- (iii) any past and future loss suffered by the insured in excess of the benefits paid or payable pursuant to sections 103, 104, 109 and 111 of *The Workers' Compensation Act, 2013* 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.
- (2) Subject to section 43 of *The Workers' Compensation Act, 2013*, an action may be brought by a Part II.1 beneficiary or a Part II.1 beneficiary's spouse or dependant in the Court of Queen's Bench for economic loss, but only if the defendant against whom the action is brought is not being sued in that person's capacity as the owner or operator of a motor vehicle that is insured pursuant to this Act.
- (3) Notwithstanding any provision to the contrary, if the death or bodily injury is occasioned in Saskatchewan by an uninsured motor vehicle or a motor vehicle where the names of the operator or owner of the motor vehicle are not known or ascertainable, no Part II.1 beneficiary or a Part II.1 beneficiary's spouse or dependant may:
- (a) bring an action against the insurer as a nominal defendant for economic loss pursuant to section 51 or 51.1; or
 - (b) make an application for payment of a judgment for economic loss against an uninsured motorist pursuant to subsection 55(1), and the insurer shall not be deemed to be the agent of any uninsured motorist for the purposes of an action for economic loss pursuant to this section.
- (4) The following rules apply to an action pursuant to this section:
- (a) the rules of negligence and apportionment of liability apply;
 - (b) in determining economic loss, 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 spouse's or dependant's economic loss, the court shall deduct from any award all amounts the insured or the insured's 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 clause (1)(b) or subclause (1)(d)(ii), the court shall not deduct from any award any amounts the insured's spouse or dependant has received or is entitled to receive from a contract of life insurance as defined in *The Saskatchewan Insurance Act*.

(5) The deductions mentioned in subclause (4)(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.

(6) Notwithstanding any other Act or law, no government, agency of any government, public or private insurer or other person that is required or liable to pay an amount mentioned in clause (4)(c) has any right of subrogation to recover that amount.

(7) 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.

(8) The court may make a direction pursuant to subsection (7) at any stage in the proceedings.

“Tort action for non-economic loss

41.13(1) In this section:

(a) **‘insured’** means a prescribed person or member of a prescribed class of persons;

(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 paid or payable pursuant to Part II.1 for permanent impairment to an insured who is bringing an action pursuant to this section.

(2) Subject to subsections (3) and (4) and the regulations and section 43 of *The Workers' Compensation Act, 2013*, 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) 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 and Gaming Regulation Act, 1997* 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) No action shall be brought against a third party as the owner or operator of a motor vehicle if that motor vehicle is insured pursuant to this Act.

(5) Notwithstanding any Act or law, an insured is only entitled to bring an action pursuant to subsection (2) 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 subsection (2).

(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

41.14(1) If the insurer makes a payment pursuant to section 41.13 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”.

Section 51.1 amended

15(1) Subsection 51.1(1) is repealed and the following substituted:

“(1) A Part II beneficiary 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 if the Part II beneficiary:

(a) has a cause of action against a Part II.1 beneficiary or Part VIII beneficiary arising out of or stemming from bodily injury 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 subsections 41(3) and (4)”.

(2) Clause 51.1(7)(a) is amended by adding “, II.1” after “Part II”;

(3) Subsection 51.1(8) is repealed.

Section 54 amended

16 Subsection 54(5) is amended by striking out “Where payment is made under subsection (3)” **and substituting** “If payment is made pursuant to either subsection (3) or section 51.1 as a result of the application of this section.”.

Section 77.2 amended

17 Section 77.2 is amended by adding “Part II.1 or” **before** “Part VIII”.

Section 78 amended

18(1) Subsection 78(2) is amended by striking out “Subject to subsections (3) and (4), if an insured” **and substituting** “If an insured”.

(2) Subsections 78(3) and (4) are repealed.

Section 81 amended

19 Subsection 81(1) is amended:

- (a) in clause (g) by adding** “and Part II.1” **after** “Part II”;
- (b) by adding the following clause after clause (h):**

“(h.1) respecting the manner in which hearings are scheduled pursuant to subsection 7.2(8), including the notices to be sent to the driver”;
- (c) in clause (x) by adding** “or Part II.1” **after** “Part II”;
- (d) in clause (y) by adding** “or Part II.1” **after** “Part II”;
- (e) in clause (z) by adding** “or Part II.1” **after** “Part II”;
- (f) in clause (bb) by adding** “and 35.11(2)(b)(ii)” **after** “20(3)(b)(vii)”;
- (g) by repealing clause (cc) and substituting the following:**

“(cc) respecting the manner of calculating the weekly benefits payable pursuant to sections 22, 22.1, 23, 24, 24.1, 25, 35.2, 35.21, 35.22, 35.23, 35.24 and 35.25;

“(cc.1) prescribing other benefits that the insurer shall consider for the purposes of sections 26 and 35.26”;
- (h) in clause (dd) by adding** “or 35.14” **after** “section 21”;
- (i) by adding the following clauses after clause (dd):**

“(dd.1) respecting the calculation of a death benefit pursuant to sections 27, 27.1, 35.3 and 35.31;

“(dd.2) respecting the reimbursement of expenses, the terms and conditions under which the insurer may reimburse expenses and the maximum amounts that may be reimbursed”;
- (j) in clause (ee) by adding** “or 35.3” **after** “section 27”;
- (k) in clause (ff) by adding** “or 35.3” **after** “section 27”;
- (l) in clause (gg) by adding** “or 35.31(5)” **after** “subsection 27.1(5)”;
- (m) in clause (hh) by adding** “or 35.32” **after** “section 27.2”;
- (n) in clause (ii) by striking out** “sections 28, 28.1 and 29” **and substituting** “sections 28, 28.1, 29, 35.4, 35.41 and 35.5”;

(o) by adding the following clauses after clause (ii):

“(ii.1) prescribing the manner in which the insurer may determine the consumer price index for the purposes of Parts II and II.1;

“(ii.2) for the purposes of sections 30.3 and 35.83, authorizing the use of ratios calculated pursuant to sections 30.2 and 35.82, respectively;

“(ii.3) prescribing any matter necessary for the purposes of section 35.91;

“(ii.4) respecting the release of information pursuant to statutory condition 5 set out in section 35 and pursuant to section 35.62”;

(p) by repealing clause (jj) and substituting the following:

“(jj) respecting examinations pursuant to statutory condition 4 set out in section 35 and section 35.63, including the content of reports based on examinations, the reimbursement of expenses incurred by the insured to undergo an examination and the costs for medical reports”;

(q) by adding the following clauses after clause (jj):

“(jj.1) respecting the manner in which the insurer shall determine responsibility for an accident pursuant to section 35.11;

“(jj.2) respecting the form and content of a change in coverage;

“(jj.3) respecting the type, size or class of motorcycle for which a motorcycle election may not be provided or the class of persons that is prohibited from providing a motorcycle election;

“(jj.4) respecting the manner in which the insured’s debt to the insurer may be deducted from compensation payable to the insured by the insurer in either Part II or Part II.1;

“(jj.5) prescribing the circumstances in which benefits may be subject to garnishment, seizure, attachment, execution and any other process or claim pursuant to section 35.79”;

(r) in clause (II) by adding “or 41.12” after “section 41.1”; and**(s) by adding the following clauses after clause (II):**

“(II.1) prescribing persons or classes of persons who are third parties for the purposes of Part IV of the Act;

“(II.2) prescribing persons or classes of persons as insured for the purposes of clause 41.12(1)(b) or 41.13(1)(a)”.

Section 175 amended**20 Clause 175(b) is amended:**

(a) in the portion of subclause (i) preceding paragraph (A) by striking out “date” and substituting “time”; and

(b) in the portion of subclause (iii) preceding paragraph (A) by striking out “date” and substituting “time”.

Coming into force

21 This Act comes into force on proclamation.

FOURTH SESSION

**Twenty-seventh
Legislature**

SASKATCHEWAN

B I L L

No. 184

An Act to amend *The Automobile Accident Insurance Act*

Received and read the

First time

Second time

Third time

And passed

Honourable Don McMorris
