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CHAPTER 36

(Bill No. 46)

An Act to Amend the Insurance Act (No. 2)

Honourable Janice A. Sherry
Minister of Environment, Labour and Justice and Attorney General

GOVERNMENT BILL

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CHAPTER 36

An Act to Amend the Insurance Act (No. 2)

(Assented to May 14, 2014)

BE IT ENACTED by the Lieutenant Governor and the Legislative Assembly of the Province of Prince Edward Island as follows:

1. Clause 175(3)(d) of the *Insurance Act R.S.P.E.I. 1988, Cap. I-4* is amended by the deletion of the words “section 245, 246, or 247” and the substitution of the words “section 245, 246, 247 or 247.1”.

2. Clause 214(b) of the Act is amended by the deletion of the words “subsection 246(1) and 247(1)” and the substitution of the words “subsection 246(1), 247(1) and 247.1(1)”.

3. Subsection 221(1) of the Act is amended by the deletion of the words “sections 245, 246 or 247” and the substitution of the words “section 245, 246, 247 or 247.1”.

4. The Act is amended by the addition of the following after section 245.994:

245.995 In sections 246 and 247, a reference to Schedule B means Schedule B as it read immediately before this section came into force. Schedule B

245.996 Sections 246 and 247 do not apply Application of sections 246 and 247
(a) to accidents occurring on or after October 1, 2014; or
(b) to a contract evidenced by a motor vehicle liability policy issued or renewed on or after October 1, 2014.

245.997 A contract of insurance evidenced by a motor vehicle liability policy made in the province before October 1, 2014, is, in respect of an accident occurring on or after that date, deemed to include the benefits and to be subject to the limits, terms and conditions referred to in section 247.1. Contracts made before October 1, 2014, deemed benefits and terms

5. The Act is amended by the addition of the following after section 247:

247.1 (1) Every contract of insurance evidenced by a motor vehicle liability policy issued or renewed on or after October 1, 2014, shall provide Accident benefits on or after October 1, 2014
(a) the medical, rehabilitation, loss of income, death and funeral expense benefits; and

(b) the other benefits,
set out in Schedule B subject to the limits, terms and conditions set out in Schedule B.

Release by claimant (2) Where an insurer makes a payment under a contract of insurance to which reference is made in subsection (1), that payment constitutes, to the extent of payment, a release by the insured person or his personal representatives of any claim that the insured person or his personal representatives, or any person claiming through or under him or by virtue of the *Fatal Accidents Act*, may have against the insurer and any other person who may be liable to the insured person or his personal representatives, if that other person is insured under a contract of the same type as is specified in subsection (1); but nothing in this subsection precludes an insurer from demanding, as a condition precedent to payment, a release to the extent of payment from the person insured or his personal representatives or any other person.

6. Subsection 248(1) of the Act is amended by the deletion of the words “sections 246 and 247, or either of them, and the substitution of the words “section 246, 247 or 247.1, or any of them,”.

7. Section 249 of the Act is amended by the deletion of the words “to which section 245, 246, or 247 applies” and the substitution of the words “to which section 245, 246, 247 or 247.1 applies”.

8. Section 250 of the Act is amended by the deletion of the words “under sections 245, 246 and 247” and the substitution of the words “under sections 245, 246, 247 and 247.1”.

9. Section 251 of the Act is amended by the deletion of the words “under sections 245, 246 and 247” and the substitution of the words “under sections 245, 246, 247 and 247.1”.

10. Section 252 of the Act is amended by the deletion of the words “within the scope of sections 246 and 247, or either of them,” and the substitution of the words “within the scope of sections 246, 247 and 247.1, or any of them,”.

11. Subsection 254(2) of the Act is amended by the deletion of the words “sections 238, 246 and 247” and the substitution of the words “section 238, 246, 247 and 247.1”.

12. Section 254.1 of the Act is amended by the addition of the following after subsection (3):

(4) This section does not apply to an action for damages in respect of an accident occurring on or after October 1, 2014. Application

13. The Act is amended by the addition of the following after section 254.1:

254.2 (1) In this section

Definitions

- (a) “accident” means an accident arising out of the use or operation of an automobile; accident
- (b) “minor personal injury” means any of the following injuries, including any clinically associated sequelae, that do not result in serious impairment: minor personal injury
- (i) sprain,
- (ii) strain, or
- (iii) whiplash-associated disorder injury;
- (c) “plaintiff” means a plaintiff in an action for damages arising out of an accident; plaintiff
- (d) “serious impairment” means an impairment of a physical or cognitive function that meets all of the following requirements: serious impairment
- (i) the impairment results in a substantial inability to perform any or all of the following:
- (A) the essential tasks of the person’s regular employment, occupation or profession, despite reasonable efforts to accommodate the person’s impairment and the person’s reasonable efforts to use the accommodation to allow the person to continue his or her employment, occupation or profession,
- (B) the essential tasks of the person’s training or education in a program or course that the person was enrolled in or had been accepted for enrolment in at the time of the accident, despite reasonable efforts to accommodate the person’s impairment and the person’s reasonable efforts to use the accommodation to allow the person to continue his or her training or education,
- (C) the normal activities of the person’s daily living,
- (ii) the impairment has been ongoing since the accident, and
- (iii) the impairment is expected not to improve substantially;
- (e) “sprain” means an injury to one or more tendons, to one or more ligaments, or to both tendons and ligaments; sprain
- (f) “strain” means an injury to one or more muscles; strain
- (g) “whiplash-associated disorder injury” means a whiplash-associated disorder other than one that exhibits one or both of the following: whiplash-associated disorder injury

(i) neurological signs that are objective, demonstrable, definable and clinically relevant,

(ii) a fracture to the spine or a dislocation of the spine.

Application (2) This section applies to an action for damages in respect of an accident occurring on or after October 1, 2014.

Maximum recoverable amount for minor personal injury (3) Except as provided in this section, in an action for damages arising out of an accident, the amount recoverable as damages for the non-pecuniary loss of the plaintiff for minor personal injury shall not exceed \$7,500.

Annual adjustment of amount recoverable (4) On January 1, 2016, and January 1 of each subsequent calendar year, the maximum amount recoverable as damages for that calendar year is set by adjusting the immediately preceding calendar year's maximum amount recoverable as damages by the annual average percentage change for the all-items Consumer Price Index for Prince Edward Island, not seasonally adjusted, published by Statistics Canada, for the immediately preceding calendar year.

Idem (5) The maximum amount recoverable for an accident occurring in any calendar year is the amount determined by this section for that calendar year.

Publication (6) For the calendar year 2016 and each subsequent calendar year, the Superintendent must publish the maximum amount recoverable as damages for the calendar year by January 31 of that year in a form and manner that ensures that the information is accessible to the public.

Injuries must be assessed separately (7) If a person suffers more than one injury as a result of an accident, each injury must be assessed separately to determine whether the injury is or is not a minor personal injury.

Injury must be primary contributing factor (8) For a sprain, strain or whiplash-associated disorder injury to be considered to have resulted in a serious impairment, the sprain, strain or whiplash-associated disorder injury must be the primary factor contributing to the impairment.

Determination of minor injury (9) The determination as to whether an injury suffered by a person as a result of an accident is or is not a minor personal injury must be based on the following:

(a) a determination as to whether the injury is a sprain, strain or whiplash-associated disorder injury; and

(b) if the injury is determined to be a sprain, strain or whiplash-associated disorder injury, a determination as to whether the sprain, strain or whiplash-associated disorder injury results in a serious impairment.

(10) For the purpose of subsection (9), the determination as to whether a sprain, strain or whiplash-associated disorder injury results in a serious impairment must take all of the following into account *Idem*

- (a) the person's pre-existing medical history;
- (b) the matters referred to in subclause 254.2(1)(d)(i) of the definition of "serious impairment" that relate to the person.

(11) If

- (a) a person suffers a sprain, strain or whiplash-associated disorder injury as a result of an accident;
- (b) the person has, without reasonable excuse, not sought and complied with all reasonable treatment recommendations of a medical practitioner trained and experienced in the assessment and treatment of the personal injuries; and
- (c) the sprain, strain or whiplash-associated disorder injury results in a serious impairment,

Treatment not followed

the sprain, strain or whiplash-associated disorder injury is a minor personal injury unless the person establishes that the sprain, strain or whiplash-associated disorder injury would have resulted in a serious impairment even if the person had sought and complied with reasonable treatment recommendation of a medical practitioner trained and experienced in the assessment and treatment of the personal injuries.

(12) Subsection (11) does not apply to a person who is a person described in provision (3) under the heading "Subsection 3 - Special Provision, Definitions and Exclusions of this Section" in Schedule B. *Idem*

14. The Act is amended by the addition of the following after subsection 254.2:

DIRECT COMPENSATION - PROPERTY DAMAGE

254.3 (1) This section applies if

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

Application re damage to automobiles

the form provided by the Superintendent, an undertaking to be bound by this section.

- Application to automobiles exempt from insurance coverage under *Highway Traffic Act* (2) This section applies, with necessary modifications, in respect of an automobile the owner, operator or lessee of which is exempt from the requirement to be insured under the *Highway Traffic Act*, if the organization that is financially responsible for the damages resulting from the accident involving the automobile files with the Superintendent an undertaking to be bound by this section.
- Recovery for damages from insured's insurer (3) If this section applies, an insured is entitled to recover for the damages to the insured's automobile and its contents and for loss of use from the insured's insurer under the coverage described in section 222 as though the insured were a third party.
- Idem* (4) Recovery under subsection (3) shall be based on the degree of fault of the insurer's insured as determined under the fault determination rules prescribed by the regulations made under clause 254.4(a).
- Action by insured (5) An insured may bring an action against the insurer if the insured is not satisfied that the degree of fault established under the fault determination rules accurately reflects the actual degree of fault or the insured is not satisfied with a proposed settlement and the matters in issue shall be determined in accordance with the ordinary rules of law.
- Idem* (6) If this section applies,
 (a) an insured has no right of action against any person involved in the incident other than the insured's insurer for damages to the insured's automobile or its contents or for loss of use;
 (b) an insured has no right of action against a person under an agreement, other than a contract of automobile insurance, in respect of damages to the insured's automobile or its contents or loss of use, except to the extent that the person is at fault or negligent in respect of those damages or that loss; and
 (c) an insurer, except as permitted by regulation, has no right of indemnification from or subrogation against any person for payments made to its insured under this section.
- Contracts limiting payment to part of amount recoverable (7) Nothing in this Part precludes an insurer, in a contract belonging to a class prescribed by the regulations made under clause 254.4(c), from agreeing with an insured that, in the event that a claim is made by the insured under this section, the insurer shall pay only
 (a) an agreed portion of the amount that the insured would otherwise be entitled to recover; or
 (b) the amount that the insured would otherwise be entitled to recover, reduced by a sum specified in the agreement.

(8) Subsection (7) does not apply unless, before the insurer enters into the contract referred to in that subsection, the insurer offers to enter into another contract with the prospective insured that does not contain the agreement referred to in that subsection but is identical to the contract referred to in subsection (7) in all other respects except for the amount of the premium.

Application of subsection (7)

(9) In the circumstances prescribed by the regulations made under clause 254.4(d), a contract belonging to a class prescribed for the purpose of subsection (7) shall provide that, in the event that a claim is made by the insured under this section, the insurer shall pay only the amount that the insured would otherwise be entitled to recover, reduced by a sum specified in the contract.

Mandatory deductible

(10) Subsection (8) does not apply to a contract that contains a provision required by subsection (9).

Application of subsection (8)

(11) If a contract contains an agreement referred to in subsection (7) or a provision required by subsection (9), the policy shall have printed or stamped on its face in conspicuous type the words "This policy contains a partial payment of recovery clause for property damage".

Use of words "partial payment of recovery clause for property damage"

(12) This section does not affect an insured's right to recover in respect of any physical damage cover in respect of the insured automobile.

Insured's right to recover for damage to automobile

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

Application to contents of automobile carried for reward

(14) This section does not apply if both automobiles are owned by the same person.

Application where automobiles have same owner

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

Application where insured driving another automobile

(16) This section does not apply if the damage occurred before the coming into force of this section.

Application if damage before commencement of this section

15. The Act is amended by the addition of the following after subsection 254.2:

254.4 The Lieutenant Governor in Council may make regulations

Regulations

(a) prescribing rules for determining the degree of fault in various situations for loss or damage arising directly or indirectly from the use or operation of an automobile;

- (b) respecting indemnification and subrogation where section 254.3 applies;
- (c) prescribing classes of contracts for the purposes of subsection 254.3(7);
- (d) prescribing the circumstances in which a contract belonging to a class prescribed under clause (c) must contain a provision described in subsection 254.3(9);
- (e) prescribing the amount, or the minimum or maximum amount, of a reduction required by a provision described in clause 254.3(7)(b) or subsection 254.3(9).

16. (1) Subsection 256(1) of the Act is amended by the deletion of the words “section 246 or section 247” and the substitution of the words “section 246, 247 or section 247.1”.

(2) Subsection 256(2) of the Act is amended by the deletion of the words “subsection 246(2) or section 247” and the substitution of the words “subsection 246(2), 247(2) or 247.1(2)”.

17. Schedule B of the Act is amended

(a) under “Subsection 1 - Medical, Rehabilitation and Funeral Expenses”,

- (i) in section 1, by the deletion of the words “\$25,000” and the substitution of the words “\$50,000”, and**
- (ii) in section 2, by the deletion of the words “\$1,000” and the substitution of the words “\$2,500”;**

(b) under “Subsection 2 - Death Benefits and Loss of Income Payments - Part I Death Benefits”, in “A”

- (i) by the deletion of the words “\$10,000” and the substitution of the words “\$50,000”,**
- (ii) by the deletion of the words “10,000” and the substitution of the words “25,000”, and**
- (iii) by the deletion of the words “2,000” and the substitution of the words “5,000”; and**

(c) under “Subsection 2 - Death Benefits and Loss of Income Payments - Part II Loss of Income - Amount of Weekly Payment”,

- (i) in clause (a), by the deletion of the words “\$140” and the substitution of the words “\$250”,**
- (ii) in subsection (2), by the deletion of the words “\$70 per week for not more than 12 weeks” and the substitution of the words “\$100 per week for not more than 52 weeks”, and**

(iii) in subsection (3), by the deletion of the words “if 18 years of age or over and under the age of 65 years,” and the substitution of the words “if previously”.

18. (1) Subject to subsection (2), this Act comes into force on October 1, 2014.

(2) Section 14 comes into force on a date that may be fixed by proclamation of the Lieutenant Governor in Council.

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<i>STAGE:</i>	<i>DATE:</i>
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<i>Assent:</i>	May 14, 2014

SIGNATURES:

Honourable H. Frank Lewis, Lieutenant Governor

Honourable Carolyn I. Bertram, Speaker

Clerk

Honourable Janice A. Sherry
Minister of Environment, Labour and Justice
and Attorney General

GOVERNMENT BILL