
Issue No. 23 - December 2019

BULLETIN

The *Automobile Insurance Act* and Related Regulations and Rules ("Insurance Legislation")

On April 17, 2019, Bill 3 and Bill 6 received Royal Assent: Bill 3 – an Act to Amend the Automobile Insurance Act and Bill 6 – an Act to Amend the Insurance Companies Act which included a package of auto insurance reforms intended to help stabilize insurance rates while enhancing consumer protection to benefit the people of the province.

The Auto Insurance reforms are based on recommendations from the independent [Automobile Insurance Review 2017-2018](#) completed by the Public Utilities Board (PUB), which included consultation with the insurance industry, stakeholders and residents of Newfoundland and Labrador. These reforms represent a major change in the automobile insurance system in Newfoundland and Labrador.

Automobile Insurance Reforms – Effective August 1, 2019

The first phase of automobile insurance reforms became effective August 1, 2019. [View the New Release](#)

- The owner or driver of an uninsured automobile will not be permitted to apply to the Facility Association for payment of damages for injuries arising from the operation of an automobile for an at-fault accident.
- Facility Association to reduce commission rates paid to brokers from six to three percent for taxis and limousine business which will be reflected in their next rate filing.
- Facility Association is to establish an all-comers risk sharing pool to allow drivers who are currently insured through Facility Association but are not considered to be the highest risk to be insured through the regular market while allowing insurance companies to share that risk with all insurers.

Automobile Insurance Reforms – Effective January 1, 2020

The second phase of automobile insurance reforms are effective January 1, 2020.

[Automobile Insurance Regulations, 2019](#)

[Automobile Insurance Prohibited Underwriting Regulations, 2019](#)

Increased Bodily Injury Deductible

Increase in the deductible on non-pecuniary damage from \$2,500 to \$5,000. The amendments to the **Automobile Insurance Regulations** reflect the application of \$2,500 deductible on accidents occurring on or after August 1, 2004 and before January 1, 2020. The application of the \$5,000 deductible in relation to accidents occurring on or after January 1, 2020. The deductible is applied equally to all claims for pain and suffering damages.

Winter Tire Discount

Pursuant to subsection 60(1)(b.1) of the amended **Automobile Insurance Act**, the **Automobile Insurance Regulations** are amended to require insurers to apply a discount for a private passenger automobile equipped with winter tires as implemented in Ontario. The amendments to the **Automobile Insurance Regulations** require an insurer to offer a winter tire discount where an insurance policy is issued or renewed on or after January 1, 2020.

Public Utilities Board issued Filing Guidelines on October 3, 2019, [Directive A.1. 2019-04](#).

Procedural Changes for Motor Vehicle Collision Claims

The **Automobile Insurance Regulations** have been amended to streamline the claim adjustment and settlement process for bodily injury claims including a requirement to provide notice of intention to commence action within 120 days after the accident and to apply for accident benefits where available. A health provider examination may be required at insurers' expense. Damages awarded will be reduced by the amount of the accident benefits to avoid double counting.

Rate Setting Process

The **Automobile Insurance Regulations** have been amended to require insurers to submit full filings every three years. For the years between full filings, the regulations allow the PUB to establish a simplified mechanism to allow an expedited filing where the average change in the rates is less than three per cent. There will be a mechanism for quick approval of rates where changes are no more than three percent in a given year, and no more than six percent cumulatively over three years.

The **Automobile Insurance Regulations** also establish a different filing process for miscellaneous vehicles (motorcycles, all-terrain vehicles, snowmobiles, motorhomes, trailer

homes, antique and classic vehicles where used for personal use). For miscellaneous vehicles, the PUB would have authority to set the time period required for the filing of rates.

Public Utilities Board will publish additional details relating to the rate setting process.

Fleet Rated Risks

Fleet rated risks are outside of the Public Utilities process allowing taxi companies and others to negotiate their rates with willing insurers.

Optional Use of Telematics

Amendments to the **Automobile Insurance Regulations** establish rules for the use of telematics and usage based insurance, including minimum disclosure requirements to the consumer from the insurer on a range of issues, requirement for specific consent from the consumer and sets out the types of information that may be used and provides limits on how that information can be used. Where the use of telematics is offered by an insurance company, an optional discount for the use of telematics will be permitted subject to ensuring the customer who opt in have their privacy rights respected.

Further guidance will be provided in Bulletins from the Superintendent of Insurance to address subsequently identified issues and to establish reporting requirements for insurance companies.

Diagnostic and Treatment Protocols for Minor Injuries

Commencement at a later date, this reform is patient-focused and delivers better care sooner in order to promote healthier outcomes for automobile accident victims. Diagnostic and treatment protocols will promote consistency and quality of care for minor injuries.

Further guidance will be provided in Bulletins from the Superintendent of Insurance, once protocols are determined.

Direct Compensation for Property Damage

Direct compensation for property damage (DCPD) allows insured drivers to be compensated by their own insurer for property damages resulting from an automobile collision caused by another party. Working with their own insurer allows drivers involved in an automobile collisions to complete the claims process more efficiently and get appropriate compensation quickly. This system is in place and works well in Ontario, New Brunswick, Nova Scotia and Quebec. Newfoundland and Labrador's new DCPD system was based on Nova Scotia's model.

Introducing DCPD will not change a consumer's right to sue for other damages. Those rights are maintained under the tort system. Not-at-fault accidents will not affect an insured's insurance premium rate under DCPD.

The Fault Determination Regulations are required for the implementation of DCPD to determine the degree of fault of an insured for loss or damage arising out of the use or

operation of an automobile. Insurance companies must determine the degree of fault assigned to each driver for purposes of determining which property damage coverage applies to the accident, and to ensure that information on at-fault accidents are made available and taken into consideration when determining premium.

The **Fault Determination Regulations** are established to assist insurance companies and provide consumers with prompt claims handling and consistent treatment. These rules cover more than 40 accident situations, using diagrams to illustrate specific occurrences, can be applied to almost every possible road collision scenario; and are applied regardless of road or weather conditions, visibility, point of impact on the vehicles, or the actions of pedestrians. Fault is allocated to each driver based on which accident scenario most closely resembles the accident. If the accident is not described by any of the scenarios, then fault is allocated according to the ordinary rules of law as it pertains to negligence.

An at-fault party, involved in a minor motor vehicle accident resulting in property damage but not causing bodily injury, may decide to cover the cost of the property damage themselves so that the accident will not be considered in the rating of their automobile policy and insurers are required to accept a voluntary payment from an at-fault party. While the Act does not allow for subrogation, the **Fault Determination Regulations** would allow for acceptance of this payment and confirm it is not considered subrogation against the person who made the payment.

Where an at-fault driver has elected to pay out of pocket for the claim, that accident cannot be taken into consideration for rating purposes. The amendment to these regulations confirms this same provision applies where the at-fault party makes a voluntary payment to the insurer under the DCPD regulations within one year after notification of the claim.

[Automobile Insurance Fault Determination Regulations](#)

If you have any questions, please contact the Office of the Superintendent of Insurance at email servicenlinfo@gov.nl.ca or phone 729-4834.

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December 6, 2019