



BILL NO. 1

Government Bill

*1st Session, 59th General Assembly
Nova Scotia
52 Elizabeth II, 2003*

An Act to Amend the Laws Respecting Automobile Insurance

CHAPTER 1
ACTS OF 2003 (SECOND SESSION)

**AS ASSENTED TO BY THE LIEUTENANT GOVERNOR
OCTOBER 30, 2003**

The Honourable Ronald S. Russell, C.D.
Minister responsible for the Insurance Act

*Halifax, Nova Scotia
Printed by Authority of the Speaker of the House of Assembly*

An Act to Amend the Laws Respecting Automobile Insurance

Be it enacted by the Governor and Assembly as follows:

1 This Act may be cited as the *Automobile Insurance Reform Act*.

PART I

INSURANCE ACT

2 The heading immediately preceding Section 2 and Section 2 of Chapter 231 of the Revised Statutes, 1989, the *Insurance Act*, are repealed.

3 Section 3 of Chapter 231, as amended by Chapter 29 of the Acts of 2000, is further amended by

(a) adding immediately after clause (d) the following clause:

(da) “Board” means the Nova Scotia Insurance Review Board established by this Act;

(b) striking out clauses (e) and (f) and substituting the following clauses:

(e) “business of insurance” means the business of insurance within the meaning of the *Insurance Companies Act* (Canada);

(f) “class of insurance” has the meaning ascribed to it by the *Insurance Companies Act* (Canada);

and

(c) adding immediately after clause (o) the following clause:

(oa) “Minister” means the member of the Executive Council assigned responsibility for this Act;

4 Subsection 5(3) of Chapter 231 is amended by

(a) striking out clauses (f) and (g); and

(b) adding immediately after clause (n) the following clause:

(na) defining any word or expression used but not defined in this Act;

5 Subsection 9(1) of Chapter 231 is amended by striking out “of Consumer Affairs” in the first line.

6 Clause 10(5)(b) of Chapter 231 is amended by striking out “of Consumer Affairs” in the first line.

7 Chapter 231 is further amended by adding immediately after Section 16 the following headings and Sections:

PART IA

NOVA SCOTIA INSURANCE REVIEW BOARD

16A In this Part,

- (a) “Chair” means the Chair of the Board;
- (b) “Executive Officer” means the Executive Officer of the Board;
- (c) “member” means a member of the Board;
- (d) “Vice-chair” means the Vice-chair of the Board.

16B (1) There is hereby established a board to be known as the Nova Scotia Insurance Review Board.

(2) The Board has those functions, powers and duties that are, from time to time, conferred or imposed on it by

- (a) this Act or any other enactment; or
- (b) the Governor in Council.

(3) The Governor in Council may assign to the Board the powers, functions and duties of any board, commission or agency and, while the assignment is in effect, that board, commission or agency is deemed to be discontinued in so far as the assignment is concerned.

(4) The Board shall examine into and report to the Governor in Council respecting any matter referred to it by the Governor in Council, including

- (a) automobile insurance rates and factors affecting them;
- (b) casualty insurance rates and availability and factors affecting them, including accident insurance, fire insurance, homeowners’ and tenants’ insurance and like coverages;
- (c) liability insurance rates and availability factors affecting them; and
- (d) any matter designated by the Governor in Council respecting any class of insurance and the factors affecting its cost or availability.

(5) The Board shall conduct an examination of the rates and availability of fire, other property and liability insurance for homeowners, tenants, non-profit organizations and small businesses and report to the Governor in Council on or before the first day of November, 2004.

16C (1) The Board consists of at least five and not more than nine members appointed by the Governor in Council.

(2) Each member appointed under subsection (1) holds office on good behaviour for such term, not exceeding five years, as the Governor in Council determines.

(3) Each member of the Board shall be sworn to the faithful performance of that member's duties before entering office.

(4) A member may be re-appointed by the Governor in Council to more than one term.

(5) Where a member of the Board resigns or retires from the Board, or where the member's term of office expires, the member shall, during such period of time as the Governor in Council determines, in respect of any application, appeal, proceeding, matter or thing heard before the member or commenced by the member as a member, have and exercise the jurisdiction of a member, including the power to complete any unfinished matter and give a decision therein as if the member had not so resigned or retired or the member's term of office had not expired.

(6) A determination by the Governor in Council pursuant to subsection (5) may be made before or after such resignation, retirement or expiration of term and may be retroactive in effect.

16D (1) The Governor in Council shall designate one of the members to be the Chair of the Board and another member to be the Vice-chair of the Board.

(2) The Chair has the general supervision and direction over the conduct of the affairs of the Board.

(3) In the case of the absence of the Chair or the Chair's inability to act, the Vice-chair shall perform the duties and exercise the powers of the Chair.

16E A member shall be paid such remuneration as the Governor in Council determines and, subject to the regulations, shall be reimbursed for reasonable travelling and other expenses necessarily incurred by the member in connection with the work of the Board.

16F (1) No member shall be directly or indirectly employed by or interested in an insurance company or interested in a share, stock, bond, mortgage, security or contract of an insurance company and, where a member voluntarily becomes so interested, the member's office becomes vacant or, where the member becomes so interested otherwise than voluntarily, the member shall, within a reasonable time, dispose of the interest.

(2) Where a member fails to dispose of an interest as required by subsection (1), the Governor in Council may declare the office of the member vacant.

(3) No member is disqualified from acting in a matter affecting an insurance company by reason only of being an insured of an insurance company, but the member may not be involved in an application, appeal, proceeding, matter or thing involving that insurance company.

16G (1) An Executive Officer and such other officers and employees as are required for the administration of the Board shall be appointed in accordance with the *Civil Service Act*.

(2) The Executive Officer shall keep a record of the proceedings of the Board, have the custody and care of all records and documents belonging to or pertaining to the Board and perform such duties as the Board requires.

(3) The Chair may engage the services of professional persons, technical persons and experts to advise the Board, upon such terms and conditions as the Board considers fit.

(4) The Board may avail itself of the services of an officer or other employee of a board, commission or department of the Province, subject to the approval of the member of the Executive Council or other person in charge of the administration of the service in which the officer or employee is employed.

16H (1) The expenses of the Board shall be paid out of the levies made by the Board and out of money appropriated by the Legislature for that purpose or, for the 2003-04 fiscal year, out of the Consolidated Fund of the Province on the direction of the Minister of Finance.

(2) The fiscal year of the Board is the same as the fiscal year of the Province.

16I The Board may make rules respecting practice and procedure in relation to matters coming before it.

16J (1) The Chair has the responsibility for the administration of the Board.

(2) The Chair may, from time to time, direct an officer or employee of the Board to attend a sitting of the Board and may prescribe that person's duties.

(3) The Chair, when present, shall preside at all sittings of the Board and, in the Chair's absence, the Vice-chair shall preside.

(4) Subject to subsection (3), the Chair shall designate the member to preside at a sitting of the Board where at least two members, not including the Chair or Vice-chair, are scheduled to be present.

16K The quorum of the Board is one member where there is no hearing and three members in all other cases.

16L Different panels of the Board may sit at the same time to determine matters before the Board.

16M A vacancy on the Board does not impair the right of the remaining members to act.

16N In a matter over which the Board has jurisdiction, the Board and each member has all the powers, privileges and immunities of a commissioner appointed pursuant to the *Public Inquiries Act*.

16O (1) A member may administer oaths or affirmations, certify as to official acts of the Board and issue subpoenas to compel the attendance of witnesses and the production of books, accounts, papers, records, documents and testimony.

(2) Where a person fails to comply with an order of the Board or a subpoena or where a witness refuses to testify to a matter regarding which the witness may be interrogated before the Board or a member, a judge of the Supreme Court of Nova Scotia shall, on application of the Board or a member, compel obedience by attachment proceedings for contempt as in the case of the disobedience of the requirements of a subpoena issued by the Court or a refusal to testify in court.

16P The Board may receive in evidence any statement, document, information or matter that, in the opinion of the Board, may assist it to deal with the matter before the Board whether or not the statement, document, information or matter is given or produced under oath or would be admissible as evidence in a court of law.

16Q A hearing may be adjourned from time to time by the Board on reasonable grounds on its own motion or on the request of a party to the proceedings.

16R A party may be represented before the Board by counsel.

16S (1) The Board has exclusive jurisdiction in all cases and in respect of all matters in which jurisdiction is conferred on it.

(2) The Board, as to all matters within its jurisdiction pursuant to this Act, may hear and determine all questions of law and of fact.

16T (1) In determining a question of fact, the Board is not bound by the finding or judgment of a court in a proceeding involved in the determination of the fact, but such finding or judgment is, in the proceedings before the Board, *prima facie* evidence only.

(2) The Board has jurisdiction to hear and determine a question of fact notwithstanding that a proceeding involving the same question of fact is pending in a court.

16U In any matter before the Board, it shall grant an order, either as specified in the application or notice of appeal or as the Board decides.

16V It is not necessary that an order of the Board show upon its face that any proceedings or notice were had or given or that circumstances existed necessary to give it jurisdiction to make the order.

16W The finding or determination of the Board upon a question of fact within its jurisdiction is binding and conclusive.

16X (1) A final decision of the Board shall be in writing and set forth reasons for the decision.

(2) A copy of the final decision shall be certified by the Executive Officer and sent to each party to the proceedings.

16Y (1) The costs of and incidental to a proceeding before the Board are in the discretion of the Board and may be fixed at a sum certain or may be taxed.

(2) The Board may order by whom costs are to be taxed and may prescribe the scale under which costs are to be taxed.

16Z (1) An appeal lies to the Nova Scotia Court of Appeal from an order of the Board upon any question as to its jurisdiction or upon any question of law.

(2) A notice of appeal must be filed within thirty days of the issuance of the order and must contain the names of the parties and the date of the order appealed from.

(3) A copy of the notice of appeal shall be served upon the other parties within ten days of filing the notice of appeal with the Nova Scotia Court of Appeal.

(4) Where there is a conflict between this Section and another enactment, that enactment prevails.

16AA(1) The Governor in Council may make regulations

(a) prescribing the terms and conditions, including remuneration, for the Board engaging the services of professional persons, technical persons and experts to advise the Board;

(b) respecting the remuneration and expenses of the Chair, Vice-chair and members of the Board;

(c) respecting the jurisdiction of the Board, and conferring additional powers, functions, duties and responsibilities upon it;

- (d) respecting the location of hearings of the Board;
 - (e) requiring public notice of hearings of the Board, with power to prescribe the manner in which and by whom the notice must be given;
 - (f) prescribing the necessary parties to applications, appeals or other matters or proceedings before the Board;
 - (g) permitting persons who are not parties to an application, appeal or other matter or proceeding before the Board to participate in an application, appeal or other matter or proceeding, with power to prescribe the extent of the participation;
 - (h) respecting the keeping of a record of matters or proceedings before the Board;
 - (i) respecting the release of information by the Board;
 - (j) respecting the manner in which the expenses of the Board are to be recovered from insurers;
 - (k) defining any word or expression used but not defined in this Part;
 - (l) respecting any matter the Governor in Council considers necessary or advisable to carry out effectively the intent and purpose of this Part.
- (2) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*.

8 Section 104 of Chapter 231, as amended by Chapter 20 of the Acts of 1995-96, is further amended by

- (a) striking out “of Consumer Affairs” in the sixth and seventh lines of clause (a);
- (b) striking out clause (d); and
- (c) adding immediately after clause (g) the following clause:
 - (ga) “mandatory condition” means a condition in a contract prescribed by regulation;

9 Subsection 106(3A) of Chapter 231 is repealed.

10 Subsection 107(1) of Chapter 231 is repealed.

11 Subsection 108(3) of Chapter 231 is amended by striking out “statutory” in the second line and substituting “mandatory”.

12 Sections 112 and 113 of Chapter 231 are repealed and the following Sections substituted:

- 112 (1) In this Section, “policy” does not include an interim receipt or a binder.
- (2) Subject to subsections (3), (4) and (5), subsection (3) of Section 108 and Section 137,

- (a) the mandatory conditions are part of every contract;
- (b) the mandatory conditions shall be printed in every policy under the heading “Mandatory Conditions”; and
- (c) no variation from, omission of or addition to a mandatory condition is binding upon the insured.

(3) The mandatory conditions do not apply to insurance coming within Sections 139 and 140.

(4) In prescribing the mandatory conditions, the Governor in Council may provide that specific conditions do not apply to contracts that do not insure against liability for loss or damage to persons and property, or to contracts that do not insure against loss of or damage to the automobile.

(5) Notwithstanding subsection (2), no contract of automobile insurance or policy document or form printed before the coming into force of this Section is invalid or of no effect for the reason only that it bears

- (a) the words “Statutory Conditions” or “statutory conditions” instead of “Mandatory Conditions” or “mandatory conditions”;
- (b) words that may have a different spelling or be presented in a different form, but have an identical intent or purpose; or
- (c) different numbering or cross-referential numbering that conveys the same effect.

113 Where a contract evidenced by a motor vehicle liability policy names an excluded driver, the insurer is not liable to any person under the contract or this Act with respect to any loss or damage that occurs while the excluded driver is driving an automobile insured under the contract.

113A In an action for loss or damage from bodily injury or death arising directly or indirectly from the use or operation of an automobile, the damages to which a plaintiff is entitled for income loss and loss of earning capacity shall be reduced by all payments in respect of the incident that the plaintiff has received or that were available before the trial of the action for income loss or loss of earning capacity under the laws of any jurisdiction or under an income-continuation benefit plan if, under the law or the plan, the provider of the benefit retains no right of subrogation.

113B (1) In this Section,

- (a) “minor injury” means a personal injury that
 - (i) does not result in a permanent serious disfigurement,
 - (ii) does not result in a permanent serious impairment of an important bodily function caused by a continuing injury which is physical in nature, and
 - (iii) resolves within twelve months following the accident;
- (b) “serious impairment” means an impairment that causes substantial interference with a person’s ability to perform their usual daily activities or their regular employment.

(2) Notwithstanding any enactment or any rule of law, but subject to subsection (6), the owner, operator or occupants of an automobile, any person present at the incident and any person who is or may be vicariously liable with respect to any of them, are not liable in an action in the Province for the following damages for income loss and loss of earning capacity from bodily injury or death arising directly or indirectly from the use or operation of the automobile:

(a) damages for income loss suffered before the trial of the action in excess of the net income loss, as determined by regulation, suffered during that period;

(b) damages for loss of earning capacity suffered after the incident and before the trial of the action in excess of the net loss of earning capacity, as determined by regulation, suffered during that period.

(3) Subsection (2) applies to all actions, including actions under the *Fatal Injuries Act* and similar legislation.

(4) Notwithstanding any enactment or any rule of law, but subject to subsection (6), the owner, operator or occupants of an automobile, any person present at the incident and any person who is or may be vicariously liable with respect to any of them, are only liable in an action in the Province for damages for any award for pain and suffering or any other non-monetary loss from bodily injury or death arising directly or indirectly from the use or operation of the automobile for a minor injury to the amount prescribed in the regulations.

(5) Subsections (2) and (4) do not protect a person from liability if the person is defended in the action by an insurer that is not licensed to undertake automobile insurance in the Province, unless the insurer has filed an undertaking to become licensed to undertake automobile insurance in the Province.

(6) In an action for loss or damage from bodily injury or death arising directly or indirectly from the use or operation of an automobile, a judge shall, on motion made before trial with the consent of the parties or in accordance with an order of a judge who conducts a pre-trial conference, determine, for the purpose of subsection (4), whether, as a result of the use or operation of the automobile, the injured person has suffered a minor injury.

(7) The determination of a judge on a motion under subsection (6) is binding on the parties at the trial.

(8) Where no motion is made under subsection (6), the judge shall determine for the purpose of this Section whether, as a result of the use or operation of the automobile, the injured person has suffered a minor injury.

113C In an action for loss or damage from bodily injury or death arising directly or indirectly from the use or operation of an automobile, under any enactment or rule of law, an award against the owner, operator or occupants of an automobile, any person present at the incident and any person who is or may be vicariously liable with respect to any of them, shall not be calculated using a discount rate less than the amount prescribed by the Governor in Council by regulation.

113D Nothing in Sections 113A to 113C prevents an insurer from providing a policy or endorsement to compensate an insured with respect to damages for any award for pain or

suffering or any other non-monetary loss in excess of the amount prescribed in the regulations or with respect to any other limitation on damages in those Sections.

13 Clause 124(1)(c) of Chapter 231 is amended by striking out “livery, jitney,” in the second line.

14 (1) Subsection 125(1) of Chapter 231 is amended by striking out “two” in the third line and substituting “five”.

(2) Subsection 125(2) of Chapter 231 is repealed.

(3) Subsection 125(3) of Chapter 231 is amended by striking out “two” in the third and in the sixth lines and substituting in each case “five”.

15 (1) Subsection 134(1) of Chapter 231 is amended by

(a) striking out “section 234” in the fourth line and substituting “paragraph (a) of section 253”;

(b) striking out “section 236” in the fifth line and substituting “paragraph (b) of section 253”;

(c) striking out “section 234.1” in the seventh line and substituting “subsection (2) of section 254”; and

(d) striking out “section 235(2)” in the eighth line and substituting “subsection (3) of section 254”.

(2) Section 134 of Chapter 231 is further amended by adding immediately after subsection (1) the following subsection:

(1A) An insured may not recover from the insured's insurer any amount with respect to damage to the insured's own automobile or injuries sustained by the insured during or in connection with circumstances for which the insured is convicted of an offence under section 249 (dangerous driving) or section 249.1 (flight) of the *Criminal Code* (Canada) unless the insured establishes that such circumstances were not the proximate cause of the accident.

(3) Subsection 134(2) of Chapter 231 is amended by striking out “Subsection (1)” in the first line and substituting “Subsections (1) and (1A)”.

(4) Section 134 of Chapter 231 is further amended by adding immediately after subsection (2) the following subsection:

(3) Notwithstanding subsection (2), no contract of automobile insurance or policy document or form that had been printed on or before the coming into force of this subsection is invalid or of no effect for the reason only that it does not have printed on it the provisions of subsection (1A) or words to like effect.

16 Clause 139Q(1)(b) of Chapter 231, as enacted by Chapter 20 of the Acts of 1995-96, is amended by adding “, or more than five hundred thousand dollars, exclusive of costs, for injury to or the death of one or more persons or damage to property resulting from any one accident occurring on or after April 1, 2004” immediately after “1996” in the fifth line.

17 Subsection 140(1) of Chapter 231 is amended by striking out “Schedule B to this Part, as the coverage in Schedule B may be added to or increased from time to time by the Governor in Council” in the sixth, seventh and eight lines and substituting “regulations made by the Governor in Council, which shall be printed in every policy under the heading “Section B - Accident Benefits””.

18 Sections 154 and 155 of Chapter 231 are repealed and the following Sections substituted:

154 (1) For the purpose of this Section, “previous rates” means, in relation to an insurer, the rates that the insurer has filed with the Nova Scotia Utility and Review Board and that were in effect on the first day of May, 2003.

(2) Effective the first day of November, 2003, an insurer shall not charge an amount more than eighty per cent of the previous rates, until the later of

(a) the first day of November, 2004, or, for the Facility Association, the first day of April, 2004; and

(b) the effective date of a new schedule of rates approved by the Board.

(3) Notwithstanding Section 40, an insurer shall, not later than the thirty-first day of January, 2004, reimburse, pursuant to the reduction of rates made by subsection (2), on a *pro rata* basis, an insured in respect of any excess premium paid by the insured to the insurer on the remainder of a contract that is in effect on the first day of November, 2003.

(4) Where a contract that is in effect on the first day of November, 2003, expires on or before the thirty-first day of January, 2004, the insurer may credit the amount of the reimbursement, calculated pursuant to subsection (3), to the insured on the premium to be paid for renewal of the contract, but the insured is entitled to the reimbursement if the insured does not renew the contract with that insurer.

(5) Where an insured is paying the insurer in instalments for a contract that is in effect on the first day of November, 2003, the insurer may credit the amount of the reimbursement, calculated pursuant to subsection (3), to the insured on the remaining instalments to be paid.

155 (1) An insurer may not apply to the Board before the first day of July, 2004, for an increase in its schedule of rates that will have effect on or after the first day of November, 2004.

(2) For greater certainty, an insurer is not required by subsection (1) to file an increase in its schedule of rates.

155A (1) For greater certainty, the Facility Association is not an insurer for the purpose of Section 155.

(2) The Facility Association is an insurer for the purpose of Section 154 and Sections 155B to 155K.

155B (1) For greater certainty, an insurer not belonging to a rating bureau may, at any time, file with the Board a schedule of rates that decreases the rates that are being charged before the date of the filing.

(2) A filing made under subsection (1) may take effect immediately after filing, but the Board may, on its own motion, review the filing and may require changes or disapprove the filing.

155C (1) Every insurer shall, on or before the first day of January, 2004, file with the Board the risk-classification system that it is using in determining the rates for each category and coverage of automobile insurance.

(2) Every insurer shall apply to the Board for approval of any changes to its risk-classification system.

(3) An insurer is not required to apply for approval of a risk-classification system that the insurer is required to use under the regulations.

(4) An insurer shall file with the Board any change to its risk-classification system that is required by the regulations.

(5) The Board may provide interim approval of a risk-classification system and, where so approved, the insurer may use the risk-classification system until such time as the Board revokes the approval or requires changes as a condition of approval.

(6) No insurer shall use a risk-classification system in classifying risks for a coverage or category of automobile insurance unless the risk-classification system is

- (a) filed with the Board;
- (b) approved by the Board, where approval is required; or
- (c) exempt from approval pursuant to this Act.

155D (1) This Section applies to the first replacement of or alteration in the schedule of rates that applies on or after November 1, 2004.

(2) Every insurer shall apply to the Board for any replacement of or alteration in the schedule of rates that it intends to use for each coverage and category of automobile insurance.

(3) Notwithstanding subsection (2), where an alteration in the schedule of rates is a general decrease for one or more categories or coverages, with no increases in any category or coverage, the approval of the Board is not required and the alteration need only be filed with the Board, but the Board may, on its own motion, review the filing and require changes or disapprove the filing.

(4) No insurer may use any rates that have not been approved by the Board, where approval is required, or that have not been filed with the Board.

(5) Subsection (4) does not apply to rates that have been filed with the Nova Scotia Utility and Review Board and that were in effect on the first day of May, 2003, as reduced pursuant to subsection (2) of Section 154.

155E Sections 155F to 155H apply to

- (a) an application for approval of a risk-classification system; and
- (b) an application for replacement of or alteration in a schedule of rates made subsequent to an application made under Section 155D.

155F (1) An application for approval of a risk-classification system or rates shall be in a form approved by the Board, shall be filed together with such information, material

and evidence as the Board may require and shall be filed in accordance with either Section 155G or Section 155H.

(2) The Board may require an applicant to provide such information, material and evidence as the Board considers necessary in addition to the information, material and evidence required to be provided in or with the application.

155G (1) An application for approval of a risk-classification system or rates is deemed to have been approved by the Board sixty days after it is filed, unless the Board, within that period, advises the applicant orally or otherwise that the Board has not approved the application.

(2) The Board may approve the application before the expiry of the sixty-day period.

(3) The Board may extend the period for approval for a period not exceeding sixty days.

(4) If the Board notifies an applicant orally that the Board has not approved an application, the Board shall, within five days, mail a written notice to the applicant confirming that fact.

(5) The Board shall not approve the application if a hearing is required by the regulations or if the Board considers that it is in the public interest to hold a hearing on the application.

155H (1) An applicant may apply for expedited approval of rates if the average of the proposed rates for each coverage and category of automobile insurance does not exceed the average of the existing rates filed by that insurer by more than the percentage prescribed by the Board for that class of applicant, coverage or category.

(2) An application for expedited approval is deemed to have been approved thirty days after it is filed, unless the Board, within that period, advises the applicant orally or otherwise that the Board has not approved the application.

(3) For greater certainty, the Board may approve an application for expedited approval before the expiry of the thirty-day period.

(4) Where the Board notifies an insurer orally that the Board has not approved the application for expedited approval, the Board shall promptly mail a written notice to the applicant confirming that fact.

(5) Where the Board notifies the insurer that the Board has not approved the application for expedited approval, the insurer may

(a) submit a new application; or

(b) resubmit the same application, in which case Section 155G applies to the application and this Section does not apply.

155I (1) The Board shall refuse to approve an application if the Board considers that

(a) the proposed risk classification system or rates are not just and reasonable in the circumstances;

(b) the proposed risk classification system is not reasonably predictive of risk or does not distinguish fairly among rates;

(c) the proposed rates would impair the solvency of the applicant or are excessive in relation to the financial circumstances of the insurer; or

(d) the proposed rates or rules are in violation of this Act or the regulations.

(2) In deciding on an application, the Board may take into account financial and other information and any other matters that directly or indirectly affect the applicant's proposed rates or the applicant's ability to underwrite insurance using the proposed risk classification system.

(3) The Board may approve or refuse to approve the application or may vary the risk classification system or the rates, and the approval may be subject to the conditions or restrictions that the Board considers appropriate in the circumstances.

155J (1) Where the Board notifies an applicant that the Board has not approved its application, the applicant may, within fifteen days after receiving the notification, appeal the decision to the Board.

(2) An appeal under subsection (1) must be in writing.

(3) The appeal shall be heard by a panel of the Board of not fewer than three members, none of whom were involved in the decision not to approve the application.

(4) The Board, on the appeal, may approve or refuse to approve the application or may vary the risk classification system or the rates, and the approval may be subject to the conditions or restrictions that the Board considers appropriate in the circumstances.

155K The Board shall assess the costs to an insurer for a review of an application or a hearing pursuant to Sections 155 to 155J and may include the cost of retaining experts and legal counsel to provide the Board with advice, including testimony, on technical and legal matters.

19 (1) Subsection 157(1) of Chapter 231 is amended by striking out "of Consumer Affairs" in the second line.

(2) Subsection 157(2) of Chapter 231 is amended by

(a) striking out "the Royal Gazette and" in the second line; and

(b) striking out "in the City of Halifax" in the third line and substituting "with broad circulation in the Province".

(3) Subsection 157(5) of Chapter 231 is amended by striking out "Appeal Division of the Supreme Court" in the third and fourth lines and substituting "Nova Scotia Court of Appeal".

20 Sections 158 and 159 of Chapter 231 are repealed and the following Sections substituted:

158 (1) The Board, or any person authorized in writing by the Board, shall have access to such

(a) books, records, securities or documents of a rating bureau or licensed insurer as are related to the schedules of rates of the rating bureau or licensed insurer;

(b) books, records, securities or documents of a rating bureau or licensed insurer as are related to the underwriting rules and principles or rate classification systems of the rating bureau or licensed insurer; and

(c) information related to return on investment, profit, retained earnings, expenses, commissions paid, executive compensation and such other matters as are related to the solvency and financial circumstances of the rating bureau or licensed insurer.

(2) Any officer or person in charge, possession, custody or control of the books, records, securities, documents or information referred to in subsection (1) who refuses access to the books, records, securities, documents or information is guilty of an offence.

159 (1) The Governor in Council may make regulations

(a) adding to or increasing medical, rehabilitation, loss of income, death and funeral expense benefits and other benefits that are required to be in contracts;

(b) defining the minimum levels of medical, rehabilitation, loss of income, death and funeral expense benefits and other benefits that insurers must offer to insureds as optional supplements to the benefits required to be in contracts;

(c) determining that exclusions or limitations in any part of the general provisions, definitions, mandatory conditions or benefits required to be included in a contract do not apply to a "person insured in Quebec" as defined by the regulations;

(d) prescribing mandatory conditions that must be included in every contract;

(e) prescribing risk-classification factors that must be used by insurers;

(f) prescribing risk-classification factors that may not be used by insurers;

(g) prescribing the circumstances under which the Board must hold hearings before approving an application;

(h) prescribing matters that may not be considered in rates, rules or risk classification systems;

(i) prescribing optional endorsements, coverages or riders that an insurer must offer to provide to insureds on an optional basis;

(j) prescribing endorsements, coverages or riders that an insurer may offer to provide to insureds on an optional basis;

(k) prescribing guidelines that are binding on the Board;

(l) prescribing activities or failures to act for the purpose of Section 159B;

(m) prescribing such additional matters related to the conduct of insurers as will tend to improve their service and assist insureds.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*.

21 Chapter 231 is further amended by adding immediately after Section 159A the following heading and Section:

WITHDRAWAL OF INSURANCE COMPANIES

159B (1) For the purpose of this Section, an insurer is withdrawing from the business of automobile insurance in the Province if the insurer does anything that results or is likely to result in a significant reduction in the amount of gross premiums written by the insurer for automobile insurance in any part of the Province, including any of the following things that have or are likely to have that result:

- (a) declining to issue, terminating, refusing to renew or refusing to process applications for contracts of automobile insurance;
- (b) refusing to provide or continue coverage or endorsements in respect of contracts of automobile insurance;
- (c) taking actions that directly or indirectly result in termination of contracts between the insurer and the agents and brokers who solicit or negotiate contracts of automobile insurance on behalf of the insurer;
- (d) reducing the ability of the agents or brokers to solicit or negotiate contracts of automobile insurance on behalf of the insurer;
- (e) reducing the insurer's ability to act as a servicing carrier or ceasing to act as a servicing carrier under the Plan of Operation of the Facility Association;
- (f) taking actions that directly or indirectly result in the termination of any contract between the insurer and the Facility Association; or
- (g) engaging in any activity or failure to act that is prescribed by the regulations.

(2) An insurer shall not withdraw from the business of automobile insurance except in accordance with this Section.

(3) An insurer that intends to withdraw from the business of automobile insurance shall file with the Superintendent a notice in the form provided by the Superintendent.

(4) The notice shall specify the date that the insurer intends to begin to withdraw from the business of automobile insurance and shall be filed at least one hundred and eighty days before that date.

(5) The Superintendent may require the insurer to provide such information, material and evidence as the Superintendent considers necessary in addition to the information, material and evidence required to be provided in the notice.

(6) The insurer may withdraw from the business of automobile insurance on or after the date specified in the notice under subsection (4).

(7) Notwithstanding subsection (6), the Superintendent may

(a) authorize the insurer to withdraw from the business of automobile insurance before the date specified in the notice under subsection (4); or

(b) prohibit the insurer from withdrawing from the business of automobile insurance until a date specified by the Superintendent that is not later than ninety days after the date specified in the notice under subsection (4).

22 The heading “SCHEDULE A TO PART VI” and Schedule A to Part VI and the heading “SCHEDULE B TO PART VI” and Schedule B to Part VI immediately following Section 159A of Chapter 231 are repealed.

23 (1) Subsection 317(1) of Chapter 231 is amended by striking out “two hundred” in the second line and substituting “five thousand”.

(2) Subsection 317(2A) of Chapter 231, as enacted by Chapter 11 of the Acts of 2003, is amended by

(a) striking out “Any” in the first line and substituting “Subject to Sections 155 and 155A, any”; and

(b) striking out “155” in the first line and substituting “154”.

(3) Subsection 317(3) of Chapter 231 is repealed and the following subsections substituted:

(3) Any insurer guilty of an offence under Section 154 is liable to a fine not exceeding one thousand dollars with respect to each insured not reimbursed in accordance with that Section.

(4) A rating bureau or licensed insurer that files information with the Board that appears calculated to mislead is guilty of an offence and liable to a fine not exceeding two hundred and fifty thousand dollars.

(5) An insurer that withdraws from the business of automobile insurance in contravention of Section 159B is guilty of an offence and liable to a fine not exceeding one million dollars.

24 Subsection 325(2) of Chapter 231 is amended by striking out “of Consumer Affairs” in the third line.

25 Subsection 333(1) of Chapter 231 is amended by striking out “of Consumer Affairs” in the third and fourth lines.

PART II

JUDICATURE ACT

26 Chapter 240 of the Revised Statutes, 1989, the *Judicature Act*, is amended by adding immediately after Section 35 the following Sections:

35A In Sections 35B to 35H,

(a) “judgment creditor” means a person who is entitled to receive payment of or to enforce a judgment;

(b) “judgment debtor” means an person who is obligated to make payment under a judgment or against whom a judgment may be enforced;

(c) “periodic payments” means the payment of money to a judgment creditor at a future time or times.

35B In a court proceeding in which damages are claimed for personal injuries or for the death of a person, or under the *Fatal Injuries Act*, the court may, on the application of any party, order that the future pecuniary damages and such other damages as the parties may agree be paid in whole or in part by periodic payments.

35C Where the court orders damages to be paid by periodic payments, the judgment shall

(a) identify each head of damage for which a periodic payment is to be made;

(b) in respect of each head of damage for which periodic payments are awarded, state

(i) the amount of each periodic payment,

(ii) the date of or the interval between each periodic payment,

(iii) the recipient of each periodic payment,

(iv) any annual percentage increase in the amount of each periodic payment, and

(v) the date or event on which the periodic payments will terminate;

and

(c) contain or have attached to it any other material that the court considers appropriate.

35D (1) Unless the court orders otherwise, a judgment that orders damages to be paid by periodic payments is conditional on the judgment debtor’s filing with the court, within thirty days after the day the judgment is rendered or such other time as the court may fix, security to assure the payment of the judgment.

(2) Security under subsection (1) shall be in the form of an annuity contract issued by a life insurer satisfactory to the court, or in any other form that is satisfactory to the court.

(3) Where security is filed and approved under this Section, the judgment debtor by whom or on whose behalf the security is filed is discharged from all liability to the judgment creditor in respect of the damages that are to be paid by periodic payments, but the owner of the security remains liable for the periodic payments until they are paid.

35E Where a judgment creditor dies before the date or event on which periodic payments are terminated for a head of damage under subclause (v) of clause (b) of Section 35C, the remaining periodic payments for that head of damage shall continue to be paid to the estate of the judgment creditor until the termination date, unless the judgment provides otherwise.

35F Except as provided in subsection (2) of Section 35D and Section 35E, no award for periodic payments of damages shall be commuted into a lump sum.

35G Periodic payments of damages for loss of future earnings are exempt from garnishment, attachment, execution or any other process or claim to the same extent that wages or earnings are exempt under law.

35H An award for periodic payments is not assignable or transferable.

35I Sections 35A to 35H apply to all proceedings, whether commenced before or after the coming into force of those Sections.

PART III

LIMITATIONS OF ACTIONS ACT

27 Clause 2(1)(f) of Chapter 258 of the Revised Statutes, 1989, the *Limitation of Actions Act*, is amended by striking out “two” in the last line and substituting “three”.

PART IV

MOTOR VEHICLE ACT

28 Section 229 of Chapter 293 of the Revised Statutes, 1989, the *Motor Vehicle Act*, is amended by striking out “who has been convicted of any criminal offence involving the use of a motor vehicle or who is under the age of nineteen years or over the age of sixty-five years” in the third, fourth, fifth and sixth lines.

29 Section 235 of Chapter 293 is repealed and the following Section substituted:

235 Except as otherwise provided and subject to subsection (3) of Section 236, where proof of financial responsibility is required to be given by any person pursuant to Sections 203 to 246, inclusive, it shall be given in the amount of five hundred thousand dollars by a driver and, in the case of an owner, in the amount of five hundred thousand dollars for each motor vehicle registered in the person's name.

30 Clause 236(1)(c) of Chapter 293 is amended by striking out “two” in the fourth line and substituting “five”.

31 Subsection 236(3) of Chapter 293 is repealed.

32 Subsection 246(4) of Chapter 293 is amended by striking out “, for which a certificate has been issued to the Registrar under this Act,” in the third and fourth lines.

33 Section 295C of Chapter 293, as enacted by Chapter 5 of the Acts of 1997 and amended by Chapter 10 of the Acts of 2002, is further amended by

(a) striking out “seven hundred and fifty” in the third line and substituting “one thousand”;

(b) striking out “thirty” in the fifth line and substituting “forty-five”;

- (c) striking out “fifteen hundred” in the sixth line and substituting “two thousand”;
- (d) striking out “sixty” in the eighth line and substituting “ninety”;
- (e) striking out “three” in the ninth line and substituting “five”; and
- (f) striking out “ninety” in the last line and substituting “one hundred and twenty”.

34 Section 299B of Chapter 293, as enacted by Chapter 10 of the Acts of 2002, is amended by adding “(1)” immediately after the Section number and by adding the following subsection:

(2) Notwithstanding subsection (1), an individual who is in default of payment of a fine imposed as a penalty pursuant to Section 299 may be imprisoned for a term of not less than forty-five days for a first offence, not less than ninety days for a second offence and not less than one hundred and twenty days for a third or subsequent offence.

PART V

SUMMARY PROCEEDINGS ACT

35 Clause 4B(h) of Chapter 450 of the Revised Statutes, 1989, the *Summary Proceedings Act*, as enacted by Chapter 10 of the Acts of 2002, is amended by

- (a) striking out “seven hundred and fifty” in the third and fourth lines and substituting “one thousand”;
 - (b) striking out “fifteen hundred” in the fifth line and substituting “two thousand”;
- and
- (c) striking out “three” in the sixth line and substituting “five”.

PART VI

EFFECTIVE DATES

36 (1) Section 21 has effect on and after September 26, 2003.

(2) Sections 1 to 9, 11 to 13, 15, 17 to 20, 22 to 25 and 33 have effect on and after November 1, 2003.

(3) Sections 14, 29 and 30 have effect on and after April 1, 2004.

(4) For greater certainty, the changes contained in this Act only apply to accidents involving the use or operation of an automobile that occur on or after November 1, 2003.
