



# **BILL NO. 86**

*Government Bill*

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*3rd Session, 61st General Assembly  
Nova Scotia  
60 Elizabeth II, 2011*

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## **An Act to Amend Chapter 231 of the Revised Statutes, 1989, the Insurance Act**

CHAPTER 35  
ACTS OF 2011

**AS ASSENTED TO BY THE LIEUTENANT GOVERNOR  
DECEMBER 15, 2011**

The Honourable Graham Steele  
*Minister responsible for the Insurance Act*

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

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**An Act to Amend Chapter 231  
of the Revised Statutes, 1989,  
the Insurance Act**

Be it enacted by the Governor and Assembly as follows:

**1** This Act may be cited as the *Fair Automobile Insurance (2011) Act*.

**2** Clause 3(t) of Chapter 231 of the Revised Statutes, 1989, the *Insurance Act*, is amended by striking out “the” in the second line and substituting “a”.

**3** (1) Subsection 4(1) of Chapter 231 is amended by striking out “persons in the public service to be Superintendent of Insurance and Deputy Superintendent of Insurance.” in the first, second and third lines and substituting the following clauses:

- (a) a person in the public service to be the Superintendent of Insurance;
- and
- (b) one or more persons in the public service to be a Deputy Superintendent of Insurance.

**(2)** Subsection 4(2) of Chapter 231 is amended by striking out “the” before “Deputy” in the second line and substituting “a”.

**4** The heading immediately after Section 107 of Chapter 231 is amended by adding “AND THIS ACT” immediately after “ACT” in the second line.

**5** Chapter 231 is further amended by adding immediately after Section 107A the following Section:

107B (1) In each year, every automobile insurer shall pay a levy of fifty cents with respect to each vehicle insured by that automobile insurer for the purpose of recovering costs incurred by volunteer fire departments in responding to motor vehicle accidents.

(2) The Superintendent shall notify each automobile insurer of the levy on or before June 30th in each year.

(3) An automobile insurer shall remit to the Superintendent the funds payable by the automobile insurer with respect to the levy no later than August 31st in each year.

(4) Where an automobile insurer fails to remit the funds payable with respect to the levy in accordance with this Section, the Superintendent may suspend the licence of the automobile insurer to transact automobile insurance in the Province effective after August 31st of the year in which the funds are due.

(5) Subsections 107A(3) to (13) apply *mutatis mutandis* to a licence suspension pursuant to this Section as if it were a licence suspension pursuant to subsection 107A(2).

(6) The funds collected from automobile insurers with respect to the levy shall be paid to volunteer fire departments as the Minister may determine.

(7) For greater certainty, nothing in this Section prevents a fire department from making a claim for costs incurred in responding to a motor vehicle accident.

(8) The Governor in Council may make regulations respecting

(a) the calculation and remittance of the funds payable by automobile insurers with respect to the levy;

(b) the notification of automobile insurers with respect to the levy and the funds payable;

(c) defining any word or expression used in this Section and not defined in this Act;

(d) any matter or thing that the Governor in Council considers necessary or advisable to carry out effectively the intent and purpose of this Section.

(9) The exercise by the Governor in Council of the authority contained in subsection (8) is regulations within the meaning of the *Regulations Act*.

**6 Chapter 231 is further amended by adding immediately after Section 138 the following heading and Sections:**

Direct Compensation for Property Damage

138A (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 the Province 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 who is licensed to undertake automobile insurance in the Province or who 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 who is licensed to undertake automobile insurance in the Province or who has filed with the Superintendent, in the form provided by the Superintendent, an undertaking to be bound by this Section.

(2) This Section applies *mutatis mutandis* in respect of an automobile, the owner, operator or lessee of which is exempt from the requirement to be insured under the *Motor Vehicle Act*, if the person who 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.

(3) Where 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 subsection (1) of Section 114 as though the insured were a third party.

(4) Recovery under subsection (3) must be based on the degree of fault of the insurer's insured as determined under the fault determination rules prescribed by regulation under clause (a) of subsection (1) of Section 138B.

(5) An insured may bring an action against an insurer if

(a) the insured is not satisfied that the degree of fault established under the fault determination rules accurately reflects the actual degree of fault; or

(b) 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.

(6) Where 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 for 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 the regulations, has no right of indemnification from or subrogation against any person for payments made to the insurer's insured under this Section.

(7) Nothing in this Part precludes an insurer, in a contract belonging to a class prescribed by the regulations, 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.

(9) In the circumstances prescribed by regulation, a contract belonging to a class prescribed by the regulations for the purpose of subsection (7) must 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.

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

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

(12) This Section does not affect an insured’s right to recover in respect of any physical damage coverage in respect of the insured automobile.

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

(14) This Section does not apply if both or all of the automobiles are owned by the same person.

(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.

(16) This Section applies only in relation to loss or damage sustained on or after the date this Section comes into force.

138B (1) The Governor in Council may make 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 138A applies;

(c) prescribing classes of contracts for the purpose of subsection (7) of Section 138A;

(d) prescribing the circumstances in which a contract belonging to a class prescribed under clause (c) must contain a provision described in subsection (9) of Section 138A;

(e) prescribing the amount, or the minimum or maximum amount, of a reduction required by a provision described in clause (b) of subsection (7) of Section 138A or subsection (9) of Section 138A.

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

**7 (1) Subsection 148(1) of Chapter 231 is amended by**

**(a) striking out “(k)” in the third line and substituting “(j)”; and**

**(b) adding “motor” immediately after “valid” in the eighth line.**

**(2) Section 148 of Chapter 231 is further amended by adding immediately after subsection (3) the following subsections:**

(4) Notwithstanding subsection (1), the Governor in Council may make regulations

(a) respecting the priority of payment of insurance held by a lessor as defined in Section 148D or by a renter as defined in Section 148D in respect of liability arising from or occurring in connection with the ownership, use or operation of an automobile owned by the lessor or renter;

(b) modifying any provision of this Act to the extent that the Governor in Council considers necessary in order to carry out the purpose and intent of this Section;

(c) defining any word or expression used in this Section and not defined in this Act.

(5) The exercise by the Governor in Council of the authority contained in subsection (4) is regulations within the meaning of the *Regulations Act*.

**8 Chapter 231 is further amended by adding immediately after Section 148 the following Sections:**

148A In Sections 148B to 148F, “owner” means an owner of a vehicle under the *Motor Vehicle Act*.

148B Subject to Section 148D, nothing in this Act shall be construed to curtail or abridge the right of any person to commence and maintain an action for damages by reason of any injuries to a person or any property resulting from

(a) the negligence of the owner or driver of any motor vehicle; or

(b) the negligence of any agent or employee of the owner of a motor vehicle.

148C (1) In this Section and Sections 148D and 148E, “highway” means a highway under the *Motor Vehicle Act*.

(2) Where a person sustains loss or damage by reason of a motor vehicle on a highway, the onus of proof in any civil action that the loss or damage did not entirely or solely arise through the negligence or improper conduct of the owner or the employee or agent of the owner acting in the course of that person’s employment or of the driver of the motor vehicle is on that owner or driver.

(3) Subsection (2) does not apply

(a) in the case of a claim by a passenger without payment against the owner or driver of the motor vehicle in which the passenger was being transported; or

(b) in the case of an accident between motor vehicles on a highway if the claim is made by the owner or driver of any of the motor vehicles involved in the accident or by a passenger in one of the motor vehicles involved in the accident against the owner or driver of another vehicle.

148D (1) In this Section,

(a) “conditional seller” means a person who, by agreement, in the ordinary course of the person’s business, enters into an agreement with another person for the conditional sale or lease of a vehicle with the

right of purchase on performance of the conditions set out in the agreement and with an immediate right of possession vested in the conditional vendee or lessee;

(b) “lender” means a person who holds a security interest in a motor vehicle through a written security agreement, who under that agreement has lent money to a person in respect of the motor vehicle and who is not in possession of the motor vehicle, or a person to whom the lender has assigned the agreement;

(c) “lessor” means a person who, by agreement, in the ordinary course of the person’s business, leases or grants exclusive use of a motor vehicle to another person for a term of more than thirty days or otherwise grants exclusive use of a motor vehicle to another person for a period of more than thirty days, and who is not in possession of the motor vehicle, or a person to whom the lessor has assigned the agreement, but does not include a conditional seller;

(d) “renter” means a person who, by agreement, in the ordinary course of the person’s business, rents a motor vehicle to another person for a term of no more than thirty days and who is not in possession of the motor vehicle, or a person to whom the renter has assigned the agreement;

(e) “security agreement” means a security agreement under the *Personal Property Security Act* or under personal property security legislation of another province of Canada;

(f) “security interest” means a security interest under the *Personal Property Security Act* or under personal property security legislation of another province of Canada;

(g) “seller” means a person who holds a security interest in a motor vehicle through a written security agreement, who sells the motor vehicle to another person under a contract in writing when the purchaser has carried out the terms of the contract and who is not in possession of the motor vehicle, or a person to whom the seller has assigned the security agreement or the contract.

(2) In an action for the recovery of loss or damage sustained by a person by reason of a motor vehicle on a highway, where a person who, at the time that the loss or damage occurred,

(a) was driving the motor vehicle; and

(b) was living with and as a member of the family of the owner of the motor vehicle,

the person is deemed, with respect to that loss or damage,

(c) to be the agent or employee of the owner of the motor vehicle;

(d) to be employed as the agent or employee of the owner of the motor vehicle; and



(e) to be driving the motor vehicle in the course of that person's employment.

(3) In an action for the recovery of loss or damage sustained by a person by reason of a motor vehicle on a highway, where a person who, at the time that the loss or damage occurred,

(a) was driving the motor vehicle; and

(b) was in possession of the motor vehicle with the consent, expressed or implied, of the owner of the motor vehicle,

the person is deemed, with respect to that loss or damage,

(c) to be the agent or employee of the owner of the motor vehicle;

(d) to be employed as the agent or employee of the owner of the motor vehicle; and

(e) to be driving the motor vehicle in the course of that person's employment.

(4) Notwithstanding any other provision in this Part, except subsections (8) and (12), in an action for the recovery of loss or damage sustained by a person by reason of a motor vehicle on a highway, the maximum amount for which a lessor or renter of the motor vehicle is liable in respect of the same incident in the person's capacity as a lessor or renter of the motor vehicle is the amount determined under subsection (7) less any amounts that

(a) are recovered for loss or damage under the third party liability provisions of a contract evidenced by a motor vehicle liability policy issued to a person other than a lessor or renter;

(b) are in respect of the use or operation of the motor vehicle; and

(c) are in respect of the same incident.

(5) Notwithstanding any other provision in this Part, except subsections (8) and (12), in an action for the recovery of loss or damage sustained by a person by reason of a motor vehicle on a highway, a person who is a conditional seller, a lender or a seller is not liable in that person's capacity as a conditional seller, a lender or a seller.

(6) Notwithstanding subsections (2) to (5), nothing in this Section relieves any person who is deemed to be the agent or employee of the owner and to be driving the motor vehicle in the course of that person's employment from liability for the loss or damage.

(7) The maximum amount for which a lessor or renter of a motor vehicle is liable for the purpose of subsection (4) is the greatest of

(a) one million dollars;

(b) the amount of third party liability insurance required by law to be carried in respect of the motor vehicle; and

(c) the amount established, or determined in the manner prescribed, by regulation.

(8) Subsections (4) and (5) do not apply

(a) in respect of amounts payable by a conditional seller, lender, lessor, renter or seller other than by reason of vicarious liability imposed by this Section; or

(b) to conditional sellers, lenders, lessors, renters or sellers or motor vehicles, or classes of conditional sellers, lenders, lessors, renters or sellers or motor vehicles, prescribed by regulation.

(9) The Governor in Council may make regulations

(a) establishing amounts payable, or prescribing the manner of determining amounts payable, for the purpose of clause (c) of subsection (7);

(b) prescribing conditional sellers, lenders, lessors, renters and sellers and motor vehicles or classes of conditional sellers, lenders, lessors, renters and sellers and motor vehicles for the purpose of clause (b) of subsection (8).

(10) The Governor in Council may make different regulations under clause (b) of subsection (9) in relation to conditional sellers, lenders, lessors, renters and sellers and motor vehicles, or classes of conditional sellers, lenders, lessors, renters and sellers and motor vehicles, for different circumstances.

(11) The exercise by the Governor in Council of the authority contained in subsection (9) is regulations within the meaning of the *Regulations Act*.

(12) Subsections (4) to (9) apply only in relation to loss or damage sustained on or after the date this Section comes into force.

148E An owner of a motor vehicle who requires or knowingly permits a person who is less than eighteen years of age to operate the motor vehicle on a highway and any person in charge of a motor vehicle who provides it to a person who is less than eighteen years of age are jointly and severally responsible with the driver for any injury, damage or loss caused by the fault of the driver in the operation of the motor vehicle, unless the owner of the vehicle satisfies the court that the driver was operating the vehicle without the express or implied consent of the owner.

148F The owner or person in charge of a motor vehicle is not responsible for any damage caused by the fault of the driver of the vehicle if the owner or person in charge of the motor vehicle proves that the vehicle was operated by or in the charge of a person who had stolen the motor vehicle.

**9 Chapter 231 is further amended by adding immediately after Section 159B the following Section:**

159BA(1) The Superintendent shall review this Part, or cause this Part to be reviewed,

(a) within seven years of the coming into force of this Section;  
and

(b) at least every seven years thereafter,  
or sooner or more often at the request of the Minister.

(2) The Superintendent shall deliver in writing to the Minister the results of the review, including any recommendations for change that the Superintendent considers appropriate as a result of the review.

**10 Clause 2(ak) of Chapter 293 of the Revised Statutes, 1989, the *Motor Vehicle Act*, is repealed.**

**11 Chapter 293 is further amended by adding immediately after Section 2 the following Section:**

2A (1) Subject to subsections (2) and (3), in this Act, “owner” of a vehicle means

(a) where a permit is issued for the vehicle, the person who holds the permit for the vehicle; or

(b) where no permit is issued for the vehicle, the person who holds the certificate of registration for the vehicle.

(2) Where this Act or the regulations requires that the owner of a vehicle be notified that the vehicle may be sold under the authority of this Act, “owner” means any person who holds a permit for the vehicle and any person who holds a certificate of registration for the vehicle.

(3) In this Act, where no permit and no certificate of registration have been issued for a vehicle or for the purpose of obtaining a certificate of registration for a vehicle, the owner of the vehicle is any person who, alone or jointly with one or more others, has the right to transfer property in the vehicle.

(4) For greater certainty, where a person who is the owner of a vehicle enters into an agreement under which the person transfers an interest in the vehicle to a creditor to secure payment or performance of an obligation, the person transferring the interest rather than the creditor is the owner of the vehicle.

**12 Sections 62, 248 to 255 and 257 of Chapter 293 are repealed.**

**13** This Act, other than Sections 1 to 3 and subsection 7(1), comes into force on such day as the Governor in Council orders and declares by proclamation.

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