

The Automobile Accident Insurance Act

being

Chapter A-35 of *The Revised Statutes of Saskatchewan, 1978* (effective February 26, 1979) as amended by the *Statutes of Saskatchewan*, 1979, c.69; 1979-80, c.92; 1980-81, c.34 and 83; 1982-83, c.16 and 22; 1983, c.66, 80 and 82; 1983-84, c.1, 16 and 54; 1984-85-86, c.1 and 47; 1986, c.1 and 33; 1986-87-88, c.29; 1988-89, c.37, 42, 44, 54 and 55; 1989-90, c.15; 1990-91, c.35; 1992, c.20; 1994, c.34; 1996, c.9; 1997, c.S-50.11 and 12; 1998, c.18; 2000, c.A-5.3, I-2.01 and 5; 2001, c.33; 2002, c.44; 2004, c.L-16.1, T-18.1 and 35; 2005, c.5; 2006, c.25; 2011, c.3; 2012, c.14; 2013, c.S-15.1, W-17.11 and c.27; 2014, c.E-13.1; and 2015, c.F-13.1001, c.21 and c.28.

NOTE:

This consolidation is not official. Amendments have been incorporated for convenience of reference and the original statutes and regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the original statutes and regulations, errors that may have appeared are reproduced in this consolidation.

Table of Contents

	SHORT TITLE		DIVISION 3
1	Short title		Death and Funeral Benefits
	INTERPRETATION		
2	Interpretation of act	27	Weekly death benefits
	PART I	27.1	Weekly death benefits – dependant
	Application for Insurance and Certificate	27.2	Capitalization of weekly death benefits
3	Issue of licences, certificates, etc., under <i>Vehicle Administration Act</i> conditional	27.3	Lump sum death benefit
4	Application for insurance	27.4	Funeral benefit
5	Basic rates		DIVISION 4
6	Safety rating assessment		Permanent Impairment Benefits
7	Notice of changes to safety ratings	28	Permanent impairment benefits
7.1	Sending of written notices	28.1	Evaluation of permanent impairment
7.2	Appeals of safety rating to board	29	Calculation of lump sum benefit
7.3	Hearing of appeal by board	29.1	Continuous idemnity
7.4	Appeal not to stay decision		DIVISION 5
7.5	Proof		Indexation of Benefits
8	Power to vary rates	30	Interpretation of Division
9	Repealed	30.1	Timing of required adjustments
10	Repealed	30.2	Calculation of adjustment
10.1	Appeal of additional premium to board	30.3	Cap on adjustments
11	Appeal pursuant to section 10.1 not to stay decision		DIVISION 6
11.1	Deduction of moneys owing		General Matters respecting Part II Benefits
12	Issue of certificate, motor vehicle liability insurance cards	30.4	Payment of benefits
13	Non-issue of certificate in certain case	31	Effect of judgment on benefits
14	Repealed	32	No enforcement
15	Effect of cancellation of registration, etc.	33	No waiver
16	Expiration of certificate	34	Exemptions – when insurer not to pay benefits pursuant to this Part
17	Conditions of certificate issued with permit		DIVISION 7
17.1	Certain certificates not valid after July 31, 1999		Statutory Conditions
18	Owner insured in another jurisdiction	35	Statutory conditions
19	Power to except certain non-residents from application of Act		PART II.1
	PART II		Motorcycle Bodily Injury Benefits
	Bodily Injury Benefits		DIVISION 1
	DIVISION 1		Application of Part and Motorcycle Election
	Application of Part and General Benefits	35.1	Interpretation
20	Application of Part	35.11	Application of Part
20.1	Bodily injury benefits	35.12	Motorcycle election
21	Medical or rehabilitation benefits	35.13	Meaning of motorcycle election
	DIVISION 2		DIVISION 2
	Weekly Benefits		General and Rehabilitation Benefits
22	Total disability for employed persons within 104 weeks	35.14	Medical or rehabilitation benefits
22.1	Partial disability for employed persons within 104 weeks		DIVISION 3
23	Total disability for employed persons after 104 weeks		Weekly Benefits
24	Total disability for homemaker within 104 weeks	35.2	Total disability for employed persons within 104 weeks
24.1	Partial disability for homemaker within 104 weeks	35.21	Partial disability for employed persons within 104 weeks
25	Confinement benefit	35.22	Total disability for employed persons after 104 weeks
26	Limited liability where total benefits exceed money value of the income of an insured	35.23	Total disability for homemaker within 104 weeks
		35.24	Partial disability for homemaker within 104 weeks
		35.25	Confinement benefit
		35.26	Limited liability where total benefits exceed money value of the income of an insured

DIVISION 4
Death and Funeral Benefits

- 35.3 Weekly death benefits
- 35.31 Weekly death benefits – dependant
- 35.32 Capitalization of weekly death benefits
- 35.33 Lump sum death benefit
- 35.34 Funeral benefit

DIVISION 5
Permanent Impairment Benefits

- 35.4 Permanent impairment benefits
- 35.41 Evaluation of permanent impairment
- 35.5 Calculation of lump sum benefit

DIVISION 6
Claims

- 35.6 Application for benefits
- 35.61 Time limits for applying
- 35.62 Release of information
- 35.63 Examination by practitioner
- 35.64 Report of examination
- 35.65 Proof of salary
- 35.66 Report of accident
- 35.67 Claimant to advise of changes
- 35.68 Insurer to advise and assist claimants

DIVISION 7
**Payment of Benefits and General Matters
Respecting Part II.1 Benefits**

- 35.7 No benefits for suicide
- 35.71 No Part II.1 benefits to occupants of stolen motor vehicles
- 35.72 When Division 3 benefits not payable
- 35.73 When permanent impairment benefits not payable
- 35.74 Proof of conviction
- 35.75 When insurer may refuse to pay or may reduce, suspend or terminate benefits
- 35.76 Payment of benefits
- 35.761 When payment for catastrophic injury may be made
- 35.77 Accidents outside Saskatchewan
- 35.78 Subrogation re accidents in Saskatchewan
- 35.79 No enforcement

DIVISION 8
Indexation of Benefits

- 35.8 Interpretation of Division
- 35.81 Timing of required adjustments
- 35.82 Calculation of adjustment
- 35.83 Cap on adjustments

DIVISION 9
Recovery of Benefits

- 35.84 Overpayment
- 35.85 Time limits for recovery
- 35.86 Cancellation of overpayment
- 35.87 Certain amounts not overpayments

DIVISION 10
Compensation Pursuant to Other Plans

- 35.9 Private insurance claims not affected
- 35.91 Exemptions – when insurer not to pay benefits pursuant to this Part
- 35.92 Subrogation for compensation pursuant to other Acts

DIVISION 11
General

- 35.93 Substantial compliance with forms and notices
- 35.94 Rights on subrogation
- 35.95 Non-compellability

PART III
Comprehensive Insurance and Insurance Money

- 36 Application of Part
- 37 Interpretation
- 38 Comprehensive insurance
- 39 Statutory conditions

PART IV
Bodily Injury and Property Damage Liability

- 40 Interpretation of Part

DIVISION 2
Limits on Actions and Tort Election

- 40.1 Actions for bodily injury prohibited
- 40.2 Tort election
- 40.3 Rules respecting tort election
- 40.4 Change in coverage

DIVISION 3
Tort Actions Available to Part II Beneficiaries

- 41 Tort actions against Part II beneficiary
- 41.1 Rules respecting actions available to Part II beneficiary

DIVISION 3.1
Tort Actions Available to Part II.1 Beneficiary

- 41.12 Tort actions for economic loss
- 41.13 Tort action for non-economic loss
- 41.14 Subrogation for non-economic loss

DIVISION 4
**General Matters re Bodily Damage and
Property Damage Liability Insurance**

- 42 Bodily injury liability and property damage liability insurance
- 43 Repealed
- 44 Additional expenditures
- 44.1 No set-off
- 45 Application of insurance money
- 46 Insured to give notice of action
- 47 Unnamed insured may recover indemnity

STATUTORY CONDITIONS

- 48 Statutory conditions
- 49 Operator further insured
- 50 Insurance proof of financial responsibility
- 51 Remedy for injuries, etc., in hit-and-run accident
- 51.1 Remedy against insurer where action against person prohibited
- 52 Uninsured motor vehicles
- 53 Insurer agent of owner of uninsured motor vehicle for service of process
- 54 Application for payment by insurer where person has cause of action
- 55 Application for payment of judgment
- 56 Non-application of section 55
- 57 Assignment of judgment
- 58 Restriction on payments under section 51, 54 or 55
- 59 Same
- 60 Payments to non-residents

PART V
Jurisdiction of Court

- 61 Interpretation
- 62 Actions in court
- 63 Repealed
- 64 Consolidation of actions for benefits or insurance money
- 65 Relief from forfeiture
- 66 Proof of intoxication
- 66.1 Proof of conviction

PART VI
Miscellaneous

- 67 Change in capacity to operate vehicle
- 68 Reports of accidents
- 69 Duty of police officer
- 70 Additional reports
- 71 Limits on public inspection re reports and statements
- 72 Duty of physician
- 73 Duty of employer
- 74 Offence
- 75 Notices, how given
- 76 Effect of delivery of receipt for premium
- 77 Waiver to be in writing
- 77.1 *Ex gratia* payments
- 77.2 Use of annuities
- 78 Misrepresentation, fraud, violation of Act, etc., renders claim invalid
- 79 Repealed
- 80 Subrogation – payments pursuant to Parts II, III and IV
- 80.1 Insurer subrogated

- 80.2 Suspension pending recovery of payments
- 81 Regulations
- 81.1 Exemption
- 82 Right of access to records, etc.
- 83 Powers additional to existing powers
- 84 *Saskatchewan Insurance Act* does not apply
- 85 Act to prevail
- 86 No action, etc., against persons administering Act
- 86.1 Immunity
- 86.2 Offence – general

PART VII
The Saskatchewan Auto Fund

- 87 Fund established
- 88 Board of directors
- 89 Property to belong to Crown
- 90 Accounting
- 91 Revenues and expenditures
- 92 Investments
- 93 Powers of insurer
- 94 Annual report
- 95 Audit
- 96 Acts of insurer
- 97 Allocation of certain costs and expenses
- 98 Manner of holding property
- 99 Transitional

PART VIII
Bodily Injury Benefits (No Fault)
DIVISION 1

Interpretation of Part

- 100 Interpretation of Part

DIVISION 2
Application of Part VIII and Bodily Injury Benefits

- 101 Application of Part
- 102 Repealed
- 103 Tort action for economic loss
- 104 Tort action for non-economic loss
- 105 Subrogation for non-economic loss
- 106 Bodily injury benefits
- 107 No benefits for suicide
- 107.1 No Part VIII benefits to occupants of stolen motor vehicles
- 108 Benefits for Saskatchewan residents and, if in a reciprocity agreement, for non-Saskatchewan residents
- 109 Benefits for non-residents
- 109.1 Right to carry on action outside Saskatchewan continued in certain circumstances
- 110 Accidents outside Saskatchewan
- 111 Subrogation re accidents in Saskatchewan

DIVISION 3		RELAPSE	
Rehabilitation		140	Relapse within two years
112	Rehabilitation	141	Relapse after two years or later
DIVISION 4		142	Limits on benefits
Income Replacement Benefit		MEDICAL APPOINTMENTS	
113	Income replacement benefit	143	Medical appointments
114	When more remunerative employment to be used	DIVISION 5	
115	Income replacement benefit for catastrophic impairment	Death Benefits	
115.1	Income replacement benefit for catastrophic injuries before August 1, 2002	144	Death benefits
SUBSTITUTE WORKER ELECTION		145	Death benefit – dependant
116	Substitute worker election	146	Capitalization of death benefits
117	Substitute worker benefit	147	Lump sum death benefit
FAMILY ENTERPRISE BENEFITS		148	Funeral benefit
118	Family enterprise benefit	149	Education benefit for surviving spouse
CAREGIVER BENEFITS		150	Vocational counselling
119	Caregiver benefits	151	Grief counselling
120	Other weekly benefits	DIVISION 6	
STUDENTS		Permanent Impairment Benefit	
121	Loss of studies benefit	152	Permanent impairment benefit
122	Income replacement benefit – during studies	153	When beneficiary dies
123	Income replacement benefit – after studies	154	Evaluation of permanent impairment
124	Student entitled to one benefit only	155	Calculation of lump sum benefit
125	Loss of scholarship, tuition, text books	DIVISION 7	
REDUCTION OF INCOME REPLACEMENT BENEFITS		Benefits for Expenses	
126	Reduction if insured earns reduced income	156	Benefits for living assistance expenses
127	Insureds near 65 years or older	157	Benefits – other expenses
128	Lump sum benefit	158	Examination by practitioner
129	Reduction of benefit if partially capable	159	Transportation and lodging expenses
130	When benefit not payable	160	Benefits for accompanying insured
TERMINATION OF DIVISION 4 BENEFITS		161	Additional expenses
131	Termination of benefits	162	Financial counselling
RESIDUAL EMPLOYMENT DETERMINATION		DIVISION 8	
132	Determined employment after second anniversary	Claims	
133	Determination of employment for students	163	Application for benefits
134	Factors in determining employment	164	Time limits for applying
135	Reduction for determined employment	165	Release of information
CALCULATION OF DIVISION 4 BENEFITS		166	Proof of salary
136	Maximum yearly insurable earnings	167	Report of examination
137	Industrial average wage	168	Report of accident
138	Limit on income replacement benefits	169	Reimbursement for costs of report
139	Calculation of net income	170	Claimant to advise of changes
		171	Insurer to advise and assist claimants

DIVISION 9
Payment of Benefits

172	Payment of benefits
173	When payment for catastrophic injury may be made
174	When Division 4 benefits not payable
175	When permanent impairment benefits not payable
176	Proof of conviction
177	Beneficiary may appeal decision of insurer
178	Payment of loss of studies benefit
179	To whom benefits to reimburse expenses may be paid
180	Payment to estate
181	Payment to guardians
182	Benefits, other than income replacement benefits, not subject to seizure or assignment
183	When insurer may refuse to pay or may reduce, suspend or terminate benefits

DIVISION 10
Indexation of Benefits

184	Interpretation of division
185	Timing of required adjustments
186	Calculation of adjustment
187	Cap on adjustments

DIVISION 11
Insurer's Decision and Appeals

188	Insurer's decisions final
189	Insurer to give written reasons
190	Mediation
191	Right to appeal
192	Court rules apply to proceeding before the court
193	Conduct of appeal before appeal commission
194	Appeal to the Court of Appeal
195	Variation of compensation
195.1	Dismissal of appeal for want of prosecution of appeal
196	Appeal does not stay decision

DIVISION 11.1
Appeal Commission

196.1	Appeal commission established
196.2	Panels of appeal commission
196.3	Evidence
196.4	Rules respecting hearings
196.5	Remuneration and employees

DIVISION 12
Recovery of Benefits

197	Overpayment
198	Time limits for recovery
199	Cancellation of overpayment
200	Certain amounts not overpayments

DIVISION 13
Compensation pursuant to other Acts and Plans

201	Private insurance claims not affected
202	Compensation pursuant to <i>The Workers' Compensation Act, 2013</i> or other legislation
203	Disability payments to reduce income replacement benefit
204	Subrogation for compensation pursuant to other Acts

DIVISION 14
General

205	Substantial compliance with forms and notices
206	<i>Ex gratia</i> payments
207	Immunity
208	Non-compellability
209	Agreements
210	Calculation of interest rates
211	Service
212	Rights on subrogation
213	Inspection of vehicle
214	Use of collected information
215	Part to prevail
216	Regulations
217	Transitional – rehabilitation benefits
218	Transitional – income replacement benefits
218.1	Transitional – appeals and commission
219	Repealed
220	Repealed

CHAPTER A-35

An Act respecting Insurance against Certain Losses resulting from Certain Motor Vehicle Accidents

SHORT TITLE

Short title

- 1** This Act may be cited as *The Automobile Accident Insurance Act*.

INTERPRETATION

Interpretation of Act

- 2(1)** In this Act:

- (a) **“accident”** means any event in which property damage or bodily injury is caused by a motor vehicle;
- (b) **“administrator”** means the person designated as the administrator pursuant to *The Traffic Safety Act*;
- (c) **“basic premium”** means the appropriate basic premium established pursuant to subsection 5(2);
- (d) **“beneficiary”** means a person who applies for and is entitled to receive benefits;
- (e) **“benefits”** means, except when used in reference to benefits payable pursuant to another Act or any legislation of another jurisdiction, any benefits payable pursuant to Part II, II.1 or VIII;
- (f) **“board”** means the Highway Traffic Board continued pursuant to *The Traffic Safety Act*;
- (g) **“bodily injury”** means any physical or mental injury, including any acquired brain injury, permanent physical or mental impairment or death;
- (h) **“bodily injury caused by a motor vehicle”** means bodily injury caused by a motor vehicle, by the use of a motor vehicle or by a load, including bodily injury caused by a trailer used with a motor vehicle, but does not include bodily injury mentioned in subsections 20(3), 35.11(2) and 101(2);
- (i) **“bodily injury liability insurance”** means the obligation of the insurer pursuant to this Act to pay insurance money in the event of bodily injury to any person as a result of one of the perils mentioned in section 42;

c. A-35

AUTOMOBILE ACCIDENT INSURANCE

- (j) **“catastrophic injury”** means a catastrophic injury as defined in the regulations made pursuant to section 81 or 216;
- (k) **“certificate”** means a certificate of insurance issued in accordance with this Act;
- (l) **“child”**, with respect to an insured, includes:
 - (i) a person to whom the insured stands in the place of a parent; and
 - (ii) a person for whose support an insured was, at the date of the accident, liable pursuant to any Act or Act of the Parliament of Canada;
- (m) **“claimant”** means a person who applies for a benefit;
- (n) **“comprehensive insurance”** means the obligation of the insurer to pay insurance money pursuant to Part III to an insured in the event of loss or damage to a motor vehicle;
- (o) **“dealer”** means a person who is the holder of a valid licence issued pursuant to *The Motor Dealers Act*;
- (p) **“employment”** means the state of being employed for remuneration;
- (q) **“fund”** means the Saskatchewan Auto Fund established pursuant to section 87;
- (r) **“garage”** means a building or part of a building within or in connection with which service is rendered on a motor vehicle in the ordinary course of business;
- (s) **“homemaker”** means a person who:
 - (i) manages, maintains and controls an independent domestic establishment without remuneration; and
 - (ii) is not employed;
- (s.1) **“industrial average wage”** means the industrial average wage as calculated in the manner set out in section 137;
- (t) **“insurance”** means insurance provided pursuant to this Act;
- (u) **“insurance money”** means any payment that the insurer is authorized or required to make pursuant to Part III or IV;
- (v) **“insured”** means:
 - (i) a person to whom or with respect to whom benefits are payable pursuant to Part II, II.1 or VIII, as the case may be;
 - (ii) a person to whom insurance money is payable pursuant to Part III; or
 - (iii) a person to whom or on whose behalf insurance money is payable for bodily injury or loss or damage to property as a result of one of the perils mentioned in section 42;
- (w) **“insurer”** means Saskatchewan Government Insurance;

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

- (x) **“licence period”** means:
- (i) in the case of an owner’s certificate, any period for which a certificate of registration for a motor vehicle, trailer or semi-trailer is issued pursuant to *The Traffic Safety Act*:
 - (A) commencing on the time and day the certificate of registration is issued; and
 - (B) ending on the day on which the certificate of registration expires; and
 - (ii) in the case of an operator’s certificate, the period:
 - (A) commencing on the first day of the month next following the anniversary of the birth of the applicant; and
 - (B) ending on the date set out on the certificate;
- (y) **“load”** means any property carried in or on a motor vehicle;
- (z) **“minister”** means the member of the Executive Council to whom for the time being the administration of this Act is assigned;
- (aa) **“motor vehicle”** means any motor vehicle propelled by any power other than muscular force and adapted for transportation on highways, but not on rails;
- (aa.1) **“motorcycle”** means a motorcycle as defined in the regulations;
- (aa.2) **“motorcycle election”** means a written election made by a Saskatchewan resident that complies with the requirements of Part II.1;
- (bb) **“necessities of life”** means food, clothing, lodging and other reasonable necessities for the maintenance of life and continuation of a person’s health;
- (cc) **“nuclear energy hazard”** means the radioactive, toxic, explosive or other hazardous properties of a nuclear substance within the meaning of the *Nuclear Energy Act* (Canada);
- (cc.1) **“occupant of a stolen motor vehicle”** means an insured who is the occupant of a motor vehicle involved in an accident and who, in connection with that motor vehicle, is convicted of an offence pursuant to:
- (i) section 322, 333.1, 334 or 354 of the *Criminal Code*; or
 - (ii) a law of a state of the United States of America that is substantially similar to an offence mentioned in subclause (i);
- (dd) **“operator’s certificate”** means a certificate of insurance issued to a person holding a licence or other permit to drive a motor vehicle pursuant to *The Traffic Safety Act*;
- (ee) **“owner’s certificate”** means a certificate of insurance issued to a person with respect to the ownership of a motor vehicle for which a certificate of registration, a dealer’s certificate or a trailer certificate of registration has been issued pursuant to *The Traffic Safety Act*;

c. A-35

AUTOMOBILE ACCIDENT INSURANCE

- (ff) **“parent”** means:
 - (i) the mother or the father of a child;
 - (ii) a person to whom custody of a child has been granted by a court of competent jurisdiction or by a custody agreement; or
 - (iii) a person with whom a child resides and who stands in the place of a parent to the child;
- (ff.01) **“Part II beneficiary”** means an individual who has provided a tort election to the insurer pursuant to sections 40.2 and 40.3;
- (ff.02) **“Part II.1 beneficiary”** means an individual who has provided a motorcycle election to the insurer pursuant to section 35.12;
- (ff.1) **“Part VIII beneficiary”** means an individual who, if he or she were to sustain a bodily injury caused by a motor vehicle arising out of an accident, would be entitled to benefits pursuant to Part VIII;
- (gg) **“permanent impairment”** includes a permanent anatomical or physiological deficit, a permanent disfigurement, a permanent acquired brain injury or any other prescribed permanent impairment;
- (hh) **“power unit”** means a motor vehicle used solely for the purpose of drawing a semi-trailer;
- (ii) **“practitioner”** means:
 - (i) a physician or surgeon;
 - (ii) a dentist;
 - (iii) a physical therapist;
 - (iv) an optometrist;
 - (v) a psychologist;
 - (vi) a psychiatrist;
 - (vii) a chiropractor;
 - (viii) an occupational therapist;
 - (ix) a massage therapist; or
 - (x) any other prescribed practitioner;
- (jj) **“prescribed”** means prescribed in the regulations;
- (kk) **“property damage caused by a motor vehicle”** means the loss or damage to property for which property damage liability insurance is provided pursuant to this Act;
- (ll) **“property damage liability insurance”** means the obligation of the insurer to pay insurance money pursuant to this Act in the event of loss or damage to property as the result of one of the perils mentioned in section 42;
- (mm) **“province”** means a province or territory of Canada;

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

(nn) **“public highway”** means a road allowance or a road, street or lane that is designed and intended for or used by the general public for the passage of motor vehicles and includes:

- (i) any bridge, culvert, drain or other public improvement erected on or in connection with a public highway; and
- (ii) any parkway, driveway, square or place that is designed and intended for or used by the general public for the passage of motor vehicles;

(oo) **“public service motor vehicle”** means a motor vehicle, trailer or semi-trailer registered as a public service motor vehicle pursuant to *The Traffic Safety Act*;

(pp) **“semi-trailer”** means a vehicle that:

- (i) is at any time drawn on a public highway by a motor vehicle;
- (ii) is designed to convey goods or persons or to serve as living quarters for persons; and
- (iii) is so designed that its weight and the weight of its load is carried partly on its own axle or axles and partly on another motor vehicle;

(qq) **“snowmobile”** means a snowmobile as defined in *The Snowmobile Act*;

(rr) **“spouse”** means:

- (i) the spouse of the insured who is, at the date of the accident, residing with the insured; or
- (ii) a person with whom, at the date of the accident, the insured is cohabiting and has cohabited as a spouse:
 - (A) continuously for a period of not less than two years; or
 - (B) continuously for a period of not less than one year, if they are parents of a child;

(ss) **“surviving spouse”** means a spouse of an insured and includes a former spouse of an insured who, at the date of the accident:

- (i) had been living separate and apart from the insured for one year or less;
- (ii) was receiving spousal support from the insured; or
- (iii) had a court order or agreement with the insured entitling that person to spousal support from the insured;

(ss.1) **“tort election”** means a written election made by a Saskatchewan resident that complies with the requirements of Part IV;

(tt) **“trailer”** means a trailer as defined in *The Traffic Safety Act*;

c. A-35**AUTOMOBILE ACCIDENT INSURANCE**

(uu) “**violation record**” includes a report made by any authority acting in an official capacity stating that a person has:

- (i) been found at fault with respect to a motor vehicle accident; or
- (ii) been convicted of an offence relating to the use or operation of a motor vehicle.

(2) **Repealed.** 2015, c.28, s.3.

(3) **Repealed.** 2015, c.28, s.3.

(4) **Repealed.** 2015, c.28, s.3..

(5) For the purposes of clause (1)(cc.1), a certificate purporting to be signed by a judge of the convicting court or other officer having custody of the records of the convicting court certifying that a person has been convicted of an offence mentioned in that clause is admissible in evidence as proof, in the absence of evidence to the contrary, of the conviction of the person without proof of the handwriting or position of the person purporting to have signed the certificate.

2002, c.44, s.3; 2004, c.T-18.1, s.297; 2005, c.5, s.3; 2011, c.3, s.3; 2015, c.28, s.3.

PART I**Application for Insurance and Certificates****Issue of licences, certificates, etc., under *The Traffic Safety Act* conditional**

3(1) Notwithstanding anything in *The Traffic Safety Act*, no certificate of registration, licence or permit for a vehicle and no licence or other driving permit required or authorized for the operation or use of a vehicle thereunder shall be issued or renewed unless the applicant therefor furnishes evidence that his application for a certificate of insurance under this Act has been approved in respect of the particular certificate, licence or permit sought to be issued.

(2) Subsection (1) applies to motor vehicles owned and operated by the Government of Saskatchewan and to the drivers of those motor vehicles, but does not apply to:

- (a) vehicles owned or operated by the Government of Canada, the government of a province other than Saskatchewan or the government of a state; or
- (b) vehicles exempted by the regulations.

(3) Notwithstanding subsection (2), the insurer may negotiate and conclude an agreement with any government therein excluded to bring any and all motor vehicles belonging to or operated by such government on the public highways of Saskatchewan within the operation of this Act.

R.S.S. 1965, c.409, s.3; 1973, c.8, s.3; R.S.S. 1978, c.A-35, s.3; 1983, c.82, s.2; 1986, c.33, s.2; 2000, c.5, s.4; 2004, c.T-18.1, s.297.

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

Application for insurance

4(1) Every person who submits an application under *The Traffic Safety Act* for any of the following shall comply with subsection (1.1):

- (a) a certificate of registration for a vehicle;
- (b) a registration permit;
- (c) a driver's licence; or
- (d) a renewal of any certificate, permit or licence mentioned in clauses (a) to (c).

(1.1) Every person mentioned in subsection (1) shall ensure that any application mentioned in subsection (1), when filed, is accompanied by:

- (a) an application to the insurer for a certificate of insurance in accordance with this Act;
- (b) the:
 - (i) basic premium; or
 - (ii) first instalment of the basic premium and any fees and charges related to the payment of the basic premium in instalments as calculated and payable in accordance with the regulations; and
- (c) any additional premium that, having been assessed, is due and payable on the day on which the application mentioned in clause (a) is filed.

(2) The insurer may approve the application for a certificate of insurance immediately or, if the insurer decides that the premium should be varied in accordance with section 8, it may withhold approval until such time as the premium has been varied and has been paid by the applicant.

(3) The application for a certificate of insurance shall be in the form prescribed by the insurer and may be incorporated in the appropriate application form provided for use under *The Traffic Safety Act*.

R.S.S. 1965, c.409, s.4; 1973, c.8, s.4; R.S.S.
1978, c.A-35, s.4; 1983, c.82, s.2; 1983-84, c.16,
s.2; 1986, c.33, s.2; 1992, c.20, s.4; 2004,
c.T-18.1, s.297.

Basic rates

5(1) The Lieutenant Governor in Council may, by regulation, classify motor vehicles, trailers and semi-trailers and the drivers of motor vehicles for the purposes of this Act and the classification may be according to the type, use and age of a motor vehicle, trailer or semi-trailer and according to the accident or violation record, or the absence thereof, of the driver of a motor vehicle, and in each case according to such other criteria as are or may be relevant to the maintenance of equitable standards in the differentiation of one class from another.

c. A-35**AUTOMOBILE ACCIDENT INSURANCE**

(1.1) Regulations made pursuant to subsection (1) may be made retroactive to a day not earlier than one year preceding the day the regulations are made.

(2) The insurer shall establish a basic premium for each class of motor vehicle, trailer and semi-trailer and each class of driver established pursuant to subsection (1).

(3) The insurer shall make available to the public at its head office and at each of its branch offices during its normal business hours a complete and current schedule of the premiums established pursuant to subsection (2).

1976-77, c.7, s.3; R.S.S. 1978, c.A-35, s.5; 1982-83, c.22, s.2; 1986-87-88, c.29, s.2; 1988-89, c.37, s.4; 1989-90, c.15, s.3.

Safety rating assessment

6(1) In this section and in sections 7 to 7.5 and 81:

(a) **“chargeable incident”** means:

(i) a motor vehicle accident:

(A) in which loss or damage arises on account of which the insurer makes a payment pursuant to this Act and the amount of the loss or damage is in excess of the prescribed amount; and

(B) with respect to which the driver of the motor vehicle is at least 50% at fault for the accident;

(ii) a conviction for contravening:

(A) a prescribed provision of *The Traffic Safety Act*;

(B) section 220, 221, 236, paragraph 249(1)(a), subsection 249(3) or (4), section 252, paragraph 253(a) or (b), subsection 255(2) or (3) or subsection 259(4) of the *Criminal Code*, where the contravention is committed by means of a motor vehicle;

(C) subsection 254(5) of the *Criminal Code* for failure or refusal to comply with a demand pursuant to section 254 of the *Criminal Code*;

(D) section 130 of the *National Defence Act* (Canada) for having contravened paragraphs 253(a) and (b), subsection 254(5) or subsection 255(2) or (3) of the *Criminal Code*;

(E) any other prescribed offence; or

(F) any law of the United States of America that is substantially similar to any of the provisions mentioned in paragraphs (A) to (E);

(iii) a suspension pursuant to section 91 of *The Highway Traffic Act*; or

(iv) a suspension or disqualification pursuant to section 78.2 of *The Vehicle Administration Act* that has not been cancelled after a review pursuant to section 78.3 of that Act;

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

- (b) **“discount”** means the discount from the premium described in subclause (4)(b)(i);
 - (c) **“driver”** means the person who is the operator of a motor vehicle regardless of whether that person has a valid licence at the time of a chargeable incident;
 - (d) **“premium”** means the basic premium set pursuant to subsection 5(2);
 - (e) **“safety rating”** means a driver’s safety rating as determined in the manner set out in the regulations;
 - (f) **“surcharge”** means the surcharge described in subclause (4)(b)(ii).
- (2) The insurer shall keep a record of all chargeable incidents for every driver.
 - (3) The insurer shall enter the number of chargeable incidents against a driver in the manner set out in the regulations.
 - (4) The insurer shall, in the manner set out in the regulations:
 - (a) determine a driver’s safety rating using the number of chargeable incidents entered against the driver; and
 - (b) based on the driver’s safety rating, determine for the driver:
 - (i) the amount of any discount from the premium that the driver is entitled to; or
 - (ii) the amount of any surcharge that the driver must pay.
 - (5) If the insurer has determined that a driver is entitled to a discount and the driver, as the owner of a motor vehicle, is purchasing or renewing an owner’s certificate for a prescribed motor vehicle or a motor vehicle that is a member of a prescribed class of motor vehicles, the insurer shall deduct the amount of the discount from the premium for that motor vehicle.
 - (6) If the insurer has determined that a driver must pay a surcharge, the insurer shall send a written notice to the driver that indicates:
 - (a) the amount of the surcharge that must be paid;
 - (b) the time within which the surcharge must be paid; and
 - (c) if the insurer considers it appropriate, the manner in which the surcharge must be paid.
 - (7) On receipt of a written notice sent pursuant to subsection (6), the driver shall pay the surcharge in the amount, within the time and in the manner set out in the written notice.
 - (8) If liability of the driver of a motor vehicle for loss or damage has been in issue before a court of competent jurisdiction, the order, decision or judgment of the court that finally concludes and determines the issue shall, for the purposes of this section, be conclusive:
 - (a) of the amount of loss or damage;
 - (b) as to whether the loss or damage was caused by fault on the part of the driver of the motor vehicle;

c. A-35**AUTOMOBILE ACCIDENT INSURANCE**

- (c) of the degree to which the driver of the motor vehicle was at fault; and
- (d) of the extent of the liability for the loss or damage of the driver of the motor vehicle.

2002, c.44, s.4; 2004, c.35, s.3; 2004, c.T-18.1, s.297.

Notice of changes to safety ratings

7 The insurer shall promptly send a written notice to a driver when the driver's safety rating is changed as a result of a chargeable incident.

2002, c.44, s.4.

Sending of written notices

7.1(1) The insurer shall send a written notice pursuant to section 6 or 7 by ordinary mail.

(2) A written notice that is sent pursuant to subsection (1) is deemed to have been received on the tenth day following the day of mailing, unless the person to whom it was mailed establishes that, through no fault of the person, he or she did not receive the written notice or that he or she received it at a later date.

2002, c.44, s.4.

Appeals of safety rating to board

7.2(1) In this section and sections 7.3 and 7.4:

(a) **“business day”** means a day on which the insurer is normally open for business, but does not include:

- (i) a Saturday; or
- (ii) a holiday;

(b) **“notice of dispute”** means a notice filed by a driver pursuant to this section contesting the driver's safety rating.

(2) A driver may appeal to the board only when the insurer's decision to change the driver's safety rating results from a chargeable incident described in subclause 6(1)(a)(i).

(3) No appeal may be made to the board with respect to the insurer's decision to change a driver's safety rating as a result of a chargeable incident described in subclause 6(1)(a)(ii).

(4) A driver who wishes to appeal shall:

- (a) file a notice of dispute at the office of the insurer within 30 days after receiving written notice of the change in the driver's safety rating; and
- (b) pay the prescribed fee.

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

- (5) On the application of a driver making an appeal pursuant to this section, the board may grant leave to file a notice of dispute after the expiration of the 30-day period mentioned in clause (4)(a) where the board considers it appropriate to do so.
- (6) On receipt of a notice of dispute pursuant to this section, the insurer shall deliver to the board:
- (a) the notice of dispute; and
 - (b) copies of all documents in the insurer's possession or control that, in the opinion of the insurer, are relevant to the appeal, other than any report furnished pursuant to section 68, 69 or 70.
- (7) On receipt of a notice of dispute pursuant to subsection (6), the board shall contact the driver to schedule a hearing.
- (8) The board shall schedule a hearing and send notices to the driver in the prescribed manner.
- (9) If the driver who made the appeal fails to attend the hearing on the date scheduled, the board may, on evidence acceptable to the board that the driver received notice of the hearing, proceed with the hearing in the absence of the driver.
- (10) **Repealed.** 2015, c.28, s.4.
- (11) **Repealed.** 2015, c.28, s.4.

2002, c.44, s.4; 2015, c.28, s.4.

Hearing of appeal by board

- 7.3(1) At the hearing of an appeal pursuant to section 7.2, the board shall consider:
- (a) the documents delivered pursuant to clause 7.2(6)(b);
 - (b) any evidence put forward by the insurer; and
 - (c) any evidence put forward by the driver.
- (2) Subject to subsection (3), on appeal the board shall either:
- (a) confirm the insurer's decision regarding the driver's safety rating; or
 - (b) vary the driver's safety rating by reducing the number of points assigned by the insurer to the driver for the driver's chargeable incident.
- (3) The board shall not reduce the points assigned to a driver for a chargeable incident below zero.
- (4) A decision of the board pursuant to this section is final and is not subject to appeal.

2002, c.44, s.4.

c. A-35**AUTOMOBILE ACCIDENT INSURANCE****Appeal not to stay decision**

7.4(1) An appeal to the board pursuant to section 7.2 does not stay the insurer's decision or affect the validity of the insurer's decision respecting a driver's safety rating.

(2) If the board varies a driver's safety rating on appeal, the insurer shall refund to the driver any premium or surcharge that the driver paid and that the board determines the driver was not liable to pay.

2002, c.44, s.4.

Proof

7.5 On an appeal pursuant to section 7.2, any document delivered by the insurer pursuant to clause 7.2(6)(b) is admissible as proof, in the absence of evidence to the contrary, of the facts contained in the document.

2002, c.44, s.4.

Power to vary rates

8(1) The insurer may consider the potential hazard or risk associated with providing a certificate of insurance to an applicant for or holder of a certificate of insurance:

- (a) at the time an applicant or holder applies to obtain or renew a certificate of insurance; or
- (b) at any time after a certificate of insurance is issued.

(2) If the insurer considers it necessary after considering the associated potential hazard or risk, the insurer may:

- (a) declare that the applicant or holder is entitled to a refund of or discount from the basic premium that the applicant or holder is required to pay pursuant to subsection 5(2); or
- (b) declare that the applicant or holder must pay an amount assessed by the insurer in addition to the basic premium that the applicant or holder is required to pay pursuant to subsection 5(2).

(3) If the insurer declares pursuant to clause (2)(b) that the applicant or holder must pay an amount in addition to the basic premium that the applicant or holder is required to pay pursuant to subsection 5(2), the applicant or holder must pay that additional amount assessed by the insurer within the time and in the manner that the insurer may direct in writing.

2002, c.44, s.5.

9 Repealed. 2002, c.44, s.5.

10 Repealed. 2015, c.28, s.5.

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

Appeal of additional premium to board

10.1(1) A person who has been assessed an amount in addition to the basic premium pursuant to section 8 may appeal the assessment to the board.

(2) An appeal to the board must be made in the manner and within the period set out in the regulations.

(3) Subject to the regulations, if an appeal is made to the board pursuant to this section, the board may confirm, reduce, increase or vary the additional premium assessed.

(4) A review pursuant to this section must be conducted in the manner prescribed in the regulations and in accordance with the terms and conditions prescribed in the regulations.

(5) A decision of the board pursuant to this section is final and is not subject to appeal.

2004, c.35, s.4.

Appeal pursuant to section 10.1 not to stay decision

11(1) An appeal to the board pursuant to section 10.1 does not stay the insurer's decision or affect the validity of the insurer's declaration respecting an additional premium to be paid by the person who is the subject of the declaration.

(2) If the board reduces an assessment on appeal, the insurer shall refund to the person who launched the appeal any additional premium that the person paid and that the board determines the person was not liable to pay.

(3) Notwithstanding the fact that an appeal has been made to the board pursuant to section 10.1, unless the person who launched the appeal has paid the amount of the additional premium:

(a) the administrator pursuant to *The Traffic Safety Act* shall not issue or renew a certificate of registration, licence or permit for a vehicle or licence or other permit to drive pursuant to the authority of *The Traffic Safety Act* respecting the person who launched the appeal while an appeal pursuant to this section is pending before the board; and

(b) the administrator pursuant to *The Traffic Safety Act* may cancel a certificate of registration, licence or permit for a vehicle or licence or other permit to drive pursuant to the authority of *The Traffic Safety Act* respecting the person who launched the appeal while an appeal pursuant to this section is pending before the board.

(4) If a person who launched an appeal to the board pursuant to section 10.1 pays the amount of the additional premium as required pursuant to subsection (3) and the board grants that person's appeal, the insurer shall immediately refund to that person the amount of the additional premium that was paid.

2002, c.44, s.6; 2004, c.T-18.1, s.297.

c. A-35**AUTOMOBILE ACCIDENT INSURANCE****Deduction of moneys owing**

11.1 The insurer may deduct from any benefit, indemnity or insurance moneys payable to a person any of the following amounts that the person owes to the insurer:

- (a) the amount of any unpaid premium;
- (b) the amount of any surcharge;
- (c) any other amount arising out of the administration of this Act.

1994, c.34, s.4.

Issue of certificate, motor vehicle liability insurance cards

12(1) Upon payment of the required premium by an applicant for a certificate under this Act, the insurer shall, upon approval of the application, issue a certificate of insurance to the applicant.

(1.1) Subject to subsection (1.2), a certificate of insurance issued pursuant to this Act gives coverage under:

- (a) Part III to the extent prescribed in the regulations and subject to the terms and conditions prescribed in the regulations; and
- (b) Part IV.

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

Form of certificate

(2) The certificate shall be in the form prescribed by the insurer and may be incorporated in the certificate of registration, licence or permit for a motor vehicle, trailer or semi-trailer, or in the licence or other permit to drive issued under authority of *The Traffic Safety Act*.

Issue of motor vehicle liability insurance cards

(3) The insurer shall make provision for the issue and delivery of such motor vehicle liability insurance cards as may be required for the purpose of *The Traffic Safety Act* by persons insured by owners' certificates, but there may be printed on an owner's certificate under the heading "Motor Vehicle Liability Insurance Card" such particulars in such form as may be satisfactory to the administrator and the particulars so printed shall constitute a motor vehicle liability insurance card within the meaning and for the purpose of *The Traffic Safety Act*.

Proof of certificate

(4) A document purporting to be:

- (a) a certificate of registration, licence or permit issued to any person by the administrator in accordance with *The Traffic Safety Act*; and
- (b) an automobile accident insurance certificate issued by the insurer;

is deemed to be a certificate duly issued pursuant to this Act to the person named in the document.

R.S.S. 1965, c.409, s.10; 1973, c.8, s.7; R.S.S. 1978, c.A-35, s.12; 1980-81, c.83, s.3; 1983, c.82, s.2; 1983-84, c.1, s.4; 1986, c.33, s.2; 1998, c.18, s.4; 2004, c.T-18.1, s.297; 2015, c.28, s.6.

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

Non-issue of certificate in certain case

13(1) No owner's certificate is to be issued or renewed with respect to a vehicle that is not required by *The Traffic Safety Act* or *The Snowmobile Act* to be registered pursuant to *The Traffic Safety Act*.

(2) A certificate that is issued contrary to this section is void.

2004, c.T-18.1, s.299.

14 Repealed. 2002, c.44, s.7.**Effect of cancellation of registration, etc.**

15(1) The suspension, revocation or cancellation under any law of a certificate of registration, licence or permit for a vehicle shall automatically suspend, revoke or cancel the owner's certificate in which the vehicle is designated.

(2) The suspension, revocation or cancellation under any law of a licence or other permit to drive of any person shall automatically suspend, revoke or cancel the operator's certificate in which the person is named.

(3) The surrender of a licence or other permit to drive of any person to a judge, provincial magistrate or justice of the peace under any law shall automatically cancel the operator's certificate in which the person is named, provided that if the judge, provincial magistrate or justice of the peace, pursuant to the provisions of *The Traffic Safety Act* in that behalf, furnishes that person with a letter authorizing him to drive a motor vehicle, the cancellation shall not take effect until midnight on the last day of the period specified in the letter of authority.

R.S.S. 1965, c.409, s.13; 1973, c.8, s.9; R.S.S.
1978, c.A-35, s.15; 1983, c.82, s.2; 1986, c.33, s.2;
2004, c.T-18.1, s.297.

Expiration of certificate

16 Unless it is earlier suspended, revoked or cancelled, a certificate expires:

(a) in the case of a certificate incorporated in a certificate of registration or licence issued pursuant to *The Traffic Safety Act*, when the certificate of registration or licence expires;

(b) in the case of a certificate incorporated in a permit issued pursuant to *The Traffic Safety Act*, when the permit expires; or

(c) in a case other than one described in clauses (a) and (b), at the time of expiry stated in the certificate.

1984-85-86, c.1, s.10; 1986, c.33, s.2; 2004,
c.T-18.1, s.297.

Conditions of certificate issued with permit

17(1) Subject to subsection (2), a certificate issued in conjunction with a permit issued pursuant to *The Traffic Safety Act*, or any other authority to drive, gives coverage under:

(a) Part III to the extent prescribed in the regulations and subject to the terms and conditions prescribed in the regulations; and

(b) Part IV.

c. A-35**AUTOMOBILE ACCIDENT INSURANCE**

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

1998, c.18, s.5; 2004, c.T-18.1, s.297; 2015, c.28, s.7.

Certain certificates not valid after July 31, 1999

17.1 Every certificate of registration or registration permit respecting a snowmobile issued pursuant to *The Traffic Safety Act* and every certificate of insurance issued pursuant to *The Automobile Accident Insurance Act* respecting a snowmobile that is in force on July 31, 1999 is deemed to be cancelled.

1998, c.18, s.5; 2004, c.T-18.1, s.297.

Owner insured in another jurisdiction

18(1) In this section:

- (a) **“non-resident owner”** means an owner of a vehicle who is a resident of another province, state or country;
- (b) **“vehicle”** means a vehicle that:
 - (i) is operated in Saskatchewan; and
 - (ii) is registered in Class A, C, D, F or LV pursuant to *The Vehicle Classification and Registration Regulations*.

(2) Parts III and IV do not apply to a non-resident owner of a vehicle, if the administrator is satisfied that the non-resident owner is insured against the non-resident owner's liability for loss or damage to the person or property of others arising out of the use, operation or ownership of the vehicle.

(3) The Lieutenant Governor in Council may order that the provisions of subsection (2) are not to operate with respect to any vehicle or class of vehicles owned by a resident of any province, state or country specified in the order.

2002, c.44, s.8; 2004, c.35, s.5.

Power to except certain non-residents from application of Act

19 The Lieutenant Governor in Council may by regulation except, subject to the conditions if any set out in the regulation, from the application, wholly or partly, of the provisions of this Act or any Part or section thereof, the owners of any class or classes of motor vehicles who are ordinarily resident in any province, state or country, other than Saskatchewan, specified in the regulation.

R.S.S. 1965, c.409, s.17; R.S.S. 1978, c.A-35, s.19.

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

PART II
Bodily Injury Benefits
DIVISION 1
Application of Part and General Benefits

Application of Part

20(1) This Part applies to any person who has:

- (a) sustained bodily injury caused by a motor vehicle arising out of an accident occurring in Canada or the United States of America or on a vessel travelling between ports of those countries; and
 - (b) provided to the insurer a tort election pursuant to sections 40.2 and 40.3.
- (2) A person who is entitled to benefits pursuant to this Part is not entitled to benefits pursuant to Part II.1 or Part VIII other than:
- (a) a death benefit pursuant to Part II.1 relating to the death of a Part II.1 beneficiary; and
 - (b) a death benefit pursuant to Part VIII relating to the death of a Part VIII beneficiary.
- (3) Notwithstanding subsection (1), this Part does not apply to bodily injury caused by a motor vehicle, if the bodily injury:
- (a) is caused while the motor vehicle is not in motion;
 - (b) subject to subsection (4), is caused:
 - (i) by, or by the use of, a device that can be operated independently and that is mounted on or attached to the motor vehicle;
 - (ii) by a self-propelled agricultural implement within the meaning of *The Traffic Safety Act*;
 - (iii) by a wheelchair as defined in *The Traffic Safety Act*;
 - (iv) by a special mobile machine as defined in *The Traffic Safety Act*;
 - (v) by a snowmobile as defined in *The Snowmobile Act*;
 - (vi) by an all terrain vehicle as defined in *The All Terrain Vehicles Act*;
or
 - (vii) by any other prescribed motor vehicle or prescribed class of motor vehicles;
 - (c) is caused by the autonomous act of an animal that is part of the motor vehicle's load;
 - (d) is caused by an action performed by the insured in connection with the maintenance, repair, alteration or improvement of the motor vehicle;
 - (e) is caused while putting a load on or taking a load off the motor vehicle;
or

c. A-35**AUTOMOBILE ACCIDENT INSURANCE**

(f) is caused as the result of a motor vehicle contest, show or race on a track or other location temporarily or permanently closed to all other motor vehicle traffic, whether or not the motor vehicle that caused the bodily injury is participating in the race, contest or show.

(4) Clause (3)(b) does not apply if a motor vehicle in motion is involved in the accident.

2002, c.44, s.9; 2004, c.T-18.1, s.297; 2015, c.28, s.8.

Bodily injury benefits

20.1 Subject to the other provisions of this Part, the insurer shall pay benefits to a beneficiary regardless of who is responsible for the accident.

2002, c.44, s.9.

Medical or rehabilitation benefits

21(1) Subject to the maximum benefit amounts mentioned in subsections (3) and (4), an insured is entitled to reimbursement for all medical services authorized by the insurer, including:

(a) surgical, dental, hospital, ambulance or professional nursing services; and

(b) any necessary physical therapy, chiropractic treatments, occupational therapy, speech therapy, prosthesis or orthosis.

(2) The amount of a benefit pursuant to subsection (1) is the amount of the expense that the insured is not entitled to be reimbursed for pursuant to any other Act.

(3) The maximum benefit amount payable pursuant to this section is \$20,000 unless the insured sustains a catastrophic injury.

(4) If an insured sustains a catastrophic injury, the maximum benefit amount payable pursuant to this section is \$150,000.

2002, c.44, s.9.

DIVISION 2

Weekly Benefits

Total disability for employed persons within 104 weeks

22(1) Subject to section 26, an insured is entitled to a weekly benefit if:

(a) either:

(i) the insured is employed; or

(ii) the insured was actively engaged in an employment for wages or profit in the 12 months preceding the accident; and

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

- (b) within 20 days after the accident, the bodily injury sustained in the accident totally and continuously disables the insured from engaging in an employment for which the insured is reasonably suited by education, training or experience.
- (2) The insurer shall pay a weekly benefit pursuant to this section for the lesser of:
 - (a) the duration of the insured's total and continuous disability; and
 - (b) 104 weeks following the accident.
- (3) Subject to subsection (4), the amount of a weekly benefit payable pursuant to this section is \$300.
- (4) If an insured has been employed for less than six months in the 12 months preceding the accident, the amount of the weekly benefit payable by the insurer is the lesser of:
 - (a) one half of the amount mentioned in subsection (3); and
 - (b) the amount obtained when the total earnings of the insured in the 12 months preceding the accident are divided by the number of weeks the insured worked.

2002, c.44, s.9.

Partial disability for employed persons within 104 weeks

22.1(1) Subject to section 26, an insured is entitled to a weekly benefit pursuant to this section if:

- (a) either:
 - (i) the insured is employed; or
 - (ii) the insured was actively engaged in an employment for wages or profit in the 12 months preceding the accident; and
- (b) within 20 days after the accident, the bodily injury sustained in the accident partially and continuously disables the insured from engaging in one or more of the essential daily duties of:
 - (i) his or her employment; or
 - (ii) an employment for which the insured is reasonably suited by education, training or experience.
- (2) The insurer shall pay a weekly benefit pursuant to this section for the lesser of:
 - (a) the duration of the insured's partial and continuous disability; and
 - (b) 104 weeks following the accident.
- (3) Subject to subsection (4), the amount of a weekly benefit payable pursuant to this section is \$150.

c. A-35**AUTOMOBILE ACCIDENT INSURANCE**

(4) If an insured has been employed for less than six months in the 12 months preceding the accident, the amount of a weekly benefit payable by the insurer is the lesser of:

- (a) one half of the amount mentioned in subsection (3); and
- (b) the amount obtained when the total earnings of the insured in the 12 months preceding the accident are divided by the number of weeks the insured worked.

2002, c.44, s.9.

Total disability for employed persons after 104 weeks

23(1) Subject to section 26, an insured is entitled to a weekly benefit pursuant to this section if:

- (a) either:
 - (i) the insured was employed at the date of the accident; or
 - (ii) the insured was actively engaged in an employment for wages or profit for any six months or more during the 12 months preceding the date of the accident;
 - (b) the insured received a weekly benefit pursuant to section 22 for the first 104 weeks following the accident; and
 - (c) the bodily injuries sustained in the accident have permanently and continuously disabled the insured from engaging in any employment for which the insured is reasonably suited by education, training or experience.
- (2) The insurer shall pay a weekly benefit pursuant to this section for the duration of the insured's permanent and continuous disability.
- (3) The amount of a weekly benefit payable pursuant to this section is \$300.

2002, c.44, s.9.

Total disability for homemaker within 104 weeks

24(1) An insured is entitled to a weekly benefit pursuant to this section if:

- (a) the insured is a homemaker; and
 - (b) within 20 days after the accident, the bodily injury sustained in the accident totally and continuously disables the insured from performing every household duty.
- (2) The insurer shall pay a weekly benefit pursuant to this section for the lesser of:
- (a) the duration of the insured's total and continuous disability; and
 - (b) 104 weeks following the accident.
- (3) The amount of a weekly benefit payable pursuant to this section is \$300.

2002, c.44, s.9.

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

Partial disability for homemaker within 104 weeks

24.1(1) An insured is entitled to a weekly benefit pursuant to this section if:

- (a) the insured is a homemaker; and
 - (b) within 20 days after the accident, the bodily injury sustained in the accident partially and continuously disables the insured from performing one or more important daily household duties.
- (2) The insurer shall pay a weekly benefit pursuant to this section for the lesser of:
- (a) the duration of the insured's partial and continuous disability; and
 - (b) 104 weeks following the accident.
- (3) The amount of a weekly benefit payable pursuant to this section is \$150.

2002, c.44, s.9.

Confinement benefit

25(1) An insured is entitled to a weekly benefit pursuant to this section if:

- (a) the insured is not entitled to a weekly benefit pursuant to section 22 or 24; and
 - (b) within 20 days after the accident, the bodily injury sustained in the accident:
 - (i) totally and continuously disables the insured; and
 - (ii) pursuant to instructions from a prescribed practitioner, confines the insured to a hospital, bed or wheelchair.
- (2) The insurer shall pay a weekly benefit pursuant to this section for the lesser of:
- (a) the duration of the insured's confinement; and
 - (b) 52 weeks following the accident.
- (3) The amount of a weekly benefit payable pursuant to this section is \$150.

2002, c.44, s.9.

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

26(1) This section applies if the sum of weekly benefits otherwise payable to an insured pursuant to section 22, 22.1 or 23 and any other accident or disability benefits payable to the insured under a contract of insurance with respect to an accident exceed the insured's average yearly income in the 12 months preceding the accident.

c. A-35**AUTOMOBILE ACCIDENT INSURANCE**

(2) Notwithstanding sections 22, 22.1 and 23, in the circumstances mentioned in subsection (1), the insurer is only liable pursuant to section 22, 22.1 or 23 to pay a reduced weekly benefit to an insured in the amount RWB as calculated in accordance with the following formula:

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

where:

AVWE is the insured's average aggregate weekly earnings in the 12 months preceding the accident;

PWB is the prescribed weekly benefit that would otherwise be payable to the insured pursuant to section 22, 22.1 or 23 but for this section; and

OB is the total benefits payable to the insured with respect to the accident.

(3) If, as the result of applying subsection (2), the reduced weekly benefit received by the insured would be less than the weekly benefit otherwise payable, the insurer shall pay to the insured the positive difference between the weekly benefit and the reduced weekly benefit.

2002, c.44, s.9.

DIVISION 3**Death and Funeral Benefits****Weekly death benefits**

27(1) In this Division, “**dependant**”, with respect to an insured, means:

- (a) a child of the insured who is under 21 years of age at the date of an accident and includes a child of the insured born after the accident or the death of the insured; or
- (b) any person who would qualify for a tax credit pursuant to section 118.3 of the *Income Tax Act* (Canada) for a mental or physical impairment and who is dependent on the insured for the necessities of life at the date of the accident.

(2) If an insured dies as a result of an accident, a spouse is entitled to a weekly death benefit in an amount DB calculated in accordance with the following formula:

$$\text{DB} = (45\% \times \text{NI})$$

where NI is equivalent to the insured's weekly net income at the date of the accident, as calculated in the prescribed manner.

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

(3) The minimum death benefit a spouse is entitled to receive pursuant to this section is \$45,000.

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

(5) Subject to subsection (8), if at the date of the accident the insured had a dependant, the insurer shall pay a weekly death benefit for the care and maintenance of the insured's dependant in the amount DB calculated in accordance with the following formula:

$$DB = (5\% \times NI) \times DC$$

where:

NI is equivalent to the insured's weekly net income at the date of the accident, as calculated in the prescribed manner; and

DC is the number of the insured's dependants.

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

(7) Notwithstanding subsection (6), the insurer may pay the weekly death benefit for the dependant to the Public Guardian and Trustee if:

- (a) the dependant does not reside with the spouse; or
- (b) in the insurer's opinion, the spouse has neglected or abandoned the dependant.

(8) The weekly death benefits mentioned in subsection (5) are payable until whichever of the following occurs first:

- (a) the dependant reaches 21 years of age;
- (b) the dependant dies.

2002, c.44, s.9; 2004, c.35, s.6.

Weekly death benefits – dependant

27.1(1) If both of a dependant's parents die in an accident, the dependant is entitled to the weekly death benefit mentioned in section 27 for each parent as if the dependant were the spouse of each parent.

(2) If the insured is the sole parent of a dependant, the dependant is entitled to the weekly death benefit mentioned in section 27 as if the dependant were the spouse of the insured.

(3) If, at the date of the accident, the surviving parent of the dependant is not entitled to the weekly death benefit set out in subsection 27(2), the dependant is entitled to the weekly death benefit mentioned in section 27 as if the dependant were the spouse of the insured.

c. A-35**AUTOMOBILE ACCIDENT INSURANCE**

(4) The weekly death benefit mentioned in subsection (1), (2) or (3) is payable only until whichever of the following occurs first:

- (a) the dependant reaches 21 years of age;
- (b) the dependant dies.

(5) If there is more than one dependant, the weekly death benefits mentioned in this section are to be paid in the prescribed manner.

2002, c.44, s.9.

Capitalization of weekly death benefits

27.2(1) A spouse or a dependant who is entitled to a weekly death benefit pursuant to section 27 or 27.1 may elect to have the weekly death benefit capitalized and, subject to the regulations, paid out as a lump sum.

(2) Subject to the regulations, an election pursuant to subsection (1) must be made within two years after the date of the death of the insured and is not revocable.

(3) The insurer shall undertake the capitalization in the prescribed manner.

2002, c.44, s.9.

Lump sum death benefit

27.3(1) If an insured dies leaving no spouse or dependant, the insured's estate is entitled to a lump sum death benefit of \$10,000.

(2) Notwithstanding any other Act or law, if the insured, the insured's spouse and the insured's dependant die from injuries sustained in the same accident:

- (a) they are all deemed to have died at the same time for the purposes of determining the availability of death benefits pursuant to this Part; and
- (b) for the purposes of sections 27 and 27.1, there is deemed to be no spouse or dependant.

2002, c.44, s.9.

Funeral benefit

27.4 The insured's estate is entitled to a lump sum benefit in the amount of \$5,000 for the insured's funeral.

2002, c.44, s.9.

DIVISION 4**Permanent Impairment Benefits****Permanent impairment benefits**

28(1) An insured who suffers a permanent impairment as a result of an accident is entitled to a lump sum benefit for the permanent impairment.

(2) Notwithstanding subsection (1), a lump sum benefit is not payable if the insured dies of a cause related to the accident.

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

(3) If the insured dies of a cause unrelated to an accident and, on the date of his or her death, the insured is suffering a permanent impairment as a result of the accident, the insurer shall:

- (a) estimate the amount of the lump sum benefit that it would have awarded to the insured if the insured had not died; and
- (b) pay the lump sum benefit to the insured's estate.

2002, c.44, s.9.

Evaluation of permanent impairment

28.1(1) The insurer shall evaluate an insured's permanent impairment as a percentage that is determined on the basis of the prescribed schedule of permanent impairments.

(2) If an insured's permanent impairment is not listed on the prescribed schedule of permanent impairments, the insurer shall determine a percentage for the permanent impairment using the prescribed schedule as a guide.

2002, c.44, s.9.

Calculation of lump sum benefit

29(1) If an insured suffers a permanent impairment, the insurer shall calculate the lump sum benefit in the manner set out in this section.

(2) For the purposes of subsection (1), the amount of a lump sum benefit is the amount PI calculated in accordance with the following formula:

$$PI = \$10,000 \times P$$

where P is the percentage determined pursuant to section 28.1.

(3) Notwithstanding subsection (2), if the insured is determined to have suffered a permanent impairment that includes a catastrophic injury, the amount of the lump sum benefit for a permanent impairment payable pursuant to this Division is the amount CPI calculated in accordance with the following formula:

$$CPI = \$130,000 \times P$$

where P is the percentage determined pursuant to section 28.1.

2002, c.44, s.9.

Continuous indemnity

29.1(1) In this section, "**former Act**" means this Act as it existed on December 31, 2002.

(2) Notwithstanding any other provision of this Act or any other Act or law, if, on the date of the coming into force of this section, an individual is entitled to receive an indemnity benefit pursuant to section 25 of the former Act:

- (a) the insurer, on the coming into force of this section, shall adjust the indemnity benefit to an amount equal to \$430.56 per week; and
- (b) the individual is entitled to receive only the indemnity benefit mentioned in clause (a).

c. A-35**AUTOMOBILE ACCIDENT INSURANCE**

- (3) The insurer shall adjust the indemnity benefit mentioned in subsection (2):
- (a) on the anniversary date of the coming into force of this section; and
 - (b) in accordance with sections 30.2 and 30.3.

2005, c.5, s.4.

DIVISION 5
Indexation of Benefits

Interpretation of Division

30(1) In this Division, “**consumer price index**” means the consumer price index mentioned in subsections (2) to (4).

(2) Subject to subsections (3) and (4), in this Division, the consumer price index is the “all-items” Consumer Price Index for Saskatchewan as published monthly by Statistics Canada.

(3) If no figure for the “all-items” Consumer Price Index for Saskatchewan is published by Statistics Canada for a month, the insurer shall determine a figure for that month in accordance with the regulations.

(4) If, after the day this Part comes into force, Statistics Canada uses a new method to determine the “all-items” Consumer Price Index for Saskatchewan for a particular month and the new method results in a change of more than 1% when compared with the former method, the insurer shall determine a figure in accordance with the regulations.

2002, c.44, s.9.

Timing of required adjustments

30.1(1) Subject to subsection (2), the insurer shall adjust the benefit amounts set out in this Part on January 1 of each year.

(2) The insurer shall adjust the benefits paid to an insured pursuant to sections 22, 22.1, 23, 24, 24.1 and 25 on the anniversary date of the accident.

(3) The amounts as adjusted pursuant to subsections (1) and (2) shall be applied in determining the amount of any benefit.

2002, c.44, s.9; 2004, c.35, s.7.

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

Calculation of adjustment

30.2(1) Subject to section 30.3, if an amount is to be adjusted pursuant to this Division, the adjusted amount is the amount AM calculated in accordance with the following formula:

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

where:

A is the amount to be adjusted;

CPICY is the consumer price index for the year in which the adjustment is being made; and

CPIPY is the consumer price index for the previous year.

(2) For the purposes of this section, the consumer price index for a year is the average of the consumer price indices for the 12 months preceding October 1 of the previous year.

(3) If the average of the monthly consumer price indices for a year includes more than one decimal, only the first digit is to be retained, and it is to be increased by one unit if the second digit is greater than four.

(4) If the ratio between the consumer price index for the current year and the consumer price index for the previous year includes more than three decimals, only the first three digits are to be retained, and the third digit is to be increased by one unit if the fourth digit is greater than four.

(5) After adjusting pursuant to this section, the insurer shall round the resulting amount to the nearest dollar.

2002, c.44, s.9.

Cap on adjustments

30.3(1) Subject to subsection (2), if the ratio between the consumer price index for the current year and the consumer price index for the previous year exceeds 1.06:1, the ratio is deemed to be 1.06:1.

(2) When authorized by the regulations, the insurer may use the ratio calculated pursuant to section 30.2 even though the ratio between the consumer price index for the current year and the consumer price index for the previous year exceeds 1.06:1.

2002, c.44, s.9.

c. A-35**AUTOMOBILE ACCIDENT INSURANCE****DIVISION 6****General Matters respecting Part II Benefits****Payment of benefits**

30.4(1) Notwithstanding any other provision in this Part, a beneficiary is not entitled to receive a benefit pursuant to section 22, 22.1, 24, 24.1 or 25 for the first seven days after the accident.

(2) The insurer shall pay a weekly benefit pursuant to section 22, 22.1, 23, 24, 24.1 or 25 to an insured once every 14 days.

(3) The insurer shall pay a weekly death benefit to a spouse or dependant once every 14 days subject to the spouse's or dependant's election to obtain a lump sum benefit.

(4) The insurer may request that a beneficiary provide it with receipts before paying a benefit and, if the insurer makes that request, a beneficiary may receive the benefit only after receipts that are satisfactory to the insurer are submitted.

(5) The insurer shall pay a benefit related to reimbursing expenses to a beneficiary.

(6) If a benefit is payable to a beneficiary, but not paid on or before the day he or she dies, the insurer shall pay the benefit to the beneficiary's estate.

(7) If a beneficiary who is entitled to a benefit has a personal or property guardian appointed or continued pursuant to *The Public Guardian and Trustee Act* or *The Adult Guardianship and Co-decision-making Act* who is authorized to receive the payment, the insurer shall pay the benefit to the personal or property guardian.

(8) Notwithstanding any provision to the contrary, the insurer may, at any time, elect to pay a benefit to the Public Guardian and Trustee if the Public Guardian and Trustee is authorized by law to accept the payment.

(9) The insurer shall calculate the benefits payable in section 21, subsection 27(3) and sections 27.3, 27.4 and 29 as of the date of the accident.

2002, c.44, s.9; 2004, c.35, s.8.

Effect of judgment on benefits

31(1) If a beneficiary is entitled to benefits pursuant to this Part and the beneficiary receives a judgment or settlement for an amount less than the estimated value of the future payment of those benefits:

(a) the amount of the benefit to be received pursuant to this Part is to be reduced in proportion to the amount the judgment or settlement bears to the estimated value of the future payments; and

(b) the benefits payable to the beneficiary are to be reduced accordingly.

(2) For the purposes of subsection (1), the estimated value of the future payment of benefits to be received must be based on the present day value of the deferred benefit calculated for the period with respect to which those future payments are authorized or required, as the case may be.

2002, c.44, s.9.

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

No enforcement

32(1) Subject to section 11.1 and *The Enforcement of Maintenance Orders Act, 1997*, benefits, other than weekly benefits paid pursuant to section 22, 22.1, 23, 24, 24.1 or 25, are exempt from seizure, attachment, execution and any other process or claim.

(2) A beneficiary who is entitled to any benefits, other than weekly benefits pursuant to section 22, 22.1, 23, 24, 24.1 or 25, may not assign the benefits to another person, and any purported assignment is void.

2002, c.44, s.9; 2012, c.14, s.2.

No waiver

33(1) No beneficiary shall agree with any person to waive or forego any of the benefits to which he or she may be entitled pursuant to this Part.

(2) Any agreement purporting to waive or forego any of the benefits to which a person may be entitled pursuant to this Part is void.

2002, c.44, s.9.

Exemptions – when insurer not to pay benefits pursuant to this Part

34(1) Notwithstanding any other provision of this Part, the insurer is not liable to pay any benefits pursuant to this Part to:

- (a) a person who as a result of an accident is entitled to:
 - (i) compensation pursuant to *The Workers' Compensation Act, 2013* or any other Act, or any legislation of any other jurisdiction, that relates to the compensation of persons injured in accidents; or
 - (ii) compensation pursuant to the *National Defence Act* (Canada) or the *Royal Canadian Mounted Police Act* (Canada) or any other Act, or any legislation of any other jurisdiction, that provides for compensation of persons injured in accidents;
- (b) a person who is a resident of another province, state or country; or
- (c) a spouse or dependant of a person mentioned in clause (a) or (b).

(2) If an insured is entitled to weekly benefits pursuant to section 22, 22.1 or 23 and the insured becomes entitled to benefits pursuant to the *Employment Insurance Act* (Canada), the insurer is liable only for the amount by which the weekly benefits pursuant to section 22, 22.1 or 23 exceed the benefits actually received by the insured pursuant to the *Employment Insurance Act* (Canada).

(3) In no case is the insurer liable pursuant to subsection (2) to pay more than the amounts set out in those sections.

2002, c.44, s.9; 2013, c.W-17.11, s.189.

c. A-35**AUTOMOBILE ACCIDENT INSURANCE**

DIVISION 7
Statutory Conditions

Statutory conditions

35 Accident benefits provided by this Part are subject to the following statutory conditions:

Meaning of not qualified or authorized driver

1 In these statutory conditions, a driver is deemed not to be qualified or authorized if:

- (a) the driver's ability to apply for or hold a driver's licence has been cancelled, suspended or revoked by the courts pursuant to the *Criminal Code* or the administrator pursuant to *The Traffic Safety Act*;
- (b) the driver has been disqualified from driving a motor vehicle pursuant to *The Traffic Safety Act*; or
- (c) the driver has not renewed his or her driver's licence and he or she owes money to the insurer pursuant to subsection 6(6) or section 8 or 80.2 of the Act.

Prohibitions

1.1 An insured shall not:

- (a) operate a motor vehicle while under the influence of intoxicating liquor or drugs to such an extent as to be for the time being incapable of the proper control of a motor vehicle;
- (b) operate a motor vehicle while he or she is not for the time being qualified or authorized by law to drive or operate a motor vehicle;
- (c) operate a motor vehicle of which he or she is the owner unless the motor vehicle, being a motor vehicle required to be registered pursuant to *The Traffic Safety Act*, is designated in an unexpired owner's certificate;
- (d) operate a motor vehicle of which he or she is not the owner unless he or she believes on reasonable grounds that the motor vehicle, being a motor vehicle required to be registered pursuant to *The Traffic Safety Act*, is designated in an unexpired owner's certificate;
- (e) operate a motor vehicle in any race or speed test;
- (f) operate a motor vehicle with the intent to evade a police officer;
- (g) operate a motor vehicle with the intention of causing or attempting to cause bodily injury or property damage;
- (h) permit, suffer, allow or connive at the use or operation of the insured's motor vehicle by any person contrary to clauses (a) to (g).

Proof of claim

2(1) Every claimant who seeks a benefit pursuant to this Part has the burden of proving his or her entitlement to benefits.

(2) Proof of the claim must be made by the claimant, or in the absence of the claimant's ability to make the proof, the claimant's agent.

Suicide

2.1 No benefits are payable to an insured, an insured's spouse or an insured's dependant if the insured commits suicide or attempts to commit suicide with a motor vehicle.

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

No benefits for occupants of stolen motor vehicles

2.2(1) Notwithstanding any other provision of this Act, no occupant of a stolen motor vehicle involved in an accident that occurs on or after the coming into force of this section, and no spouse or dependant of the occupant of the stolen motor vehicle claiming through, on behalf of or as a dependant of the occupant of the stolen motor vehicle, is entitled to any benefits pursuant to this Part with respect to the accident.

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

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

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

2011, c.3, s.4.

Notice of claim

3(1) A claimant shall give reasonable notice to the insurer of his or her claim not later than two years from the date of the accident.

(2) Failure to give notice within the time limit set out in subsection (1) does not invalidate a claim pursuant to this Part if it is shown that it was not reasonably practicable to give notice within that time and that the notice was given as soon as was reasonably practicable.

(3) A claimant shall provide to the insurer:

- (a) a completed proof of claim form provided by the insurer outlining the circumstances of the accident; and
- (b) a certificate from a duly qualified medical practitioner indicating the cause and nature of the injuries for which the claim is being made and the duration of the claimant's bodily injury.

(4) Subject to subsection (5), if a claimant is a minor on the date of the accident on which the claim is based, the claimant must apply for a benefit within two years after the date that the claimant reaches 18 years of age.

(5) The time limits set out in this section are postponed for a claimant who, by reason of mental disorder, is not competent to manage his or her estate until the claimant:

- (a) becomes competent to manage his or her estate; or
- (b) is represented by a personal guardian or property guardian appointed or continued pursuant to *The Public Guardian and Trustee Act* or *The Adult Guardianship and Co-decision-making Act* who is aware of a claim and has the legal capacity to make the claim on behalf of the claimant.

Examination by practitioner

4(1) If requested to do so by the insurer, an insured shall undergo an examination by a practitioner chosen by the insured.

(2) If requested to do so by the insurer, an insured shall undergo an examination by a practitioner chosen by the insurer.

c. A-35**AUTOMOBILE ACCIDENT INSURANCE**

- (3) A practitioner who examines an insured at the request of the insurer shall provide the insurer with a written report on the condition of the insured and on any other related matter requested by the insurer.
- (4) If the insurer obtains a report respecting an examination conducted pursuant to this section, the insurer, at the request of the insured who underwent the examination, shall provide a copy of the report to any practitioner designated by the insured.
- (5) The insurer may request an examination as often as it may reasonably require while a claim pursuant to this Part is pending.
- (6) Subject to the regulations, the insurer shall pay for all reasonable and authorized expenses incurred by the insured to undergo an examination pursuant to this section.
- (7) In the case of the death of an insured, the insurer may request any medical report that is prepared as a result of any autopsy conducted with respect to that death.

Release of information

- 5(1) A claimant shall provide any information, and any authorization necessary to obtain that information, that is requested by the insurer for the purposes of this Part.
- (2) As soon as is practicable after receiving a request from a claimant, the insurer shall release to the claimant, at the claimant's request, all of the insurer's information concerning the claimant and the claimant's claim that the claimant:
 - (a) is entitled by law to receive; and
 - (b) may reasonably require for the purposes of this Part.

Inspection of motor vehicle

- 6(1) The insurer shall be permitted, at any reasonable time, to inspect any motor vehicle designated in an owner's certificate and its equipment.
- (2) If a motor vehicle has an onboard computer or sensing diagnostic module installed in the motor vehicle, the insurer is entitled to examine the contents of the onboard computer or sensing diagnostic module and make a copy of any information contained on the onboard computer or sensing diagnostic module.
- (3) The insurer may use any information collected pursuant to this section to determine a claimant's entitlement to benefits pursuant to this Part.

Claimant to advise of changes

- 7(1) Every claimant shall notify the insurer without delay of any changes that affect or that might affect:
 - (a) his or her right to claim or receive a benefit; or
 - (b) the amount of a benefit that he or she is claiming or receiving.
- (2) For the purposes of subsection (1), a change includes, but is not limited to, a change in the claimant's medical condition.

Onus on claimant where report required

- 8 If a claimant is required by sections 68 and 70 of the Act to provide an accident report, the claimant shall comply as required and the onus of proving compliance is on the claimant.

Waiver

- 9 The insurer is not deemed to have waived any statutory condition pursuant to this Part either in whole or in part unless the waiver is expressed in writing and signed by the insurer.

10 Repealed. 2004, c.L-16.1, s.34.

2002, c.44, s.9; 2004, c.L-16.1, s.34; 2004,
c.T-18.1, s.297; 2004, c.35, s.9; 2005, c.5, s.5.

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

PART II.1
Motorcycle Bodily Injury Benefits

DIVISION 1
Application of Part and Motorcycle Election

Interpretation

35.1 In this Part:

- (a) **“dependant”**, with respect to an insured, means:
 - (i) a child of the insured who is under 21 years of age at the date of an accident and includes a child of the insured born after the accident or death of the insured; or
 - (ii) any person who would qualify for a tax credit pursuant to section 118.3 of the *Income Tax Act* (Canada) for a mental or physical impairment and who is dependent on the insured for the necessities of life at the date of an accident;
- (b) **“motorcycle owner”** means an individual who is issued an owner’s certificate with respect to a motorcycle pursuant to this Act and who is the holder of a driver’s licence with a prescribed M, M1, M2 or 6 endorsement;
- (c) **“single vehicle accident”** means an accident with respect to which:
 - (i) no other vehicle is involved in the accident; or
 - (ii) the name of the operator of the motor vehicle involved in or responsible for the accident is not known or ascertainable.

2015, c.28, s.9.

Application of Part

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

- (a) has sustained bodily injury caused by a motor vehicle arising out of an accident occurring in Canada or the United States of America or on a vessel travelling between ports of those countries;
- (b) has provided to the insurer a motorcycle election pursuant to section 35.12;
- (c) has sustained bodily injury while operating his or her motorcycle for which an election pursuant to section 35.12 has been provided; and
- (d) is:
 - (i) 50% or more at fault for the accident; or
 - (ii) involved in a single vehicle accident.

c. A-35**AUTOMOBILE ACCIDENT INSURANCE**

(2) Notwithstanding subsection (1), this Part does not apply to bodily injury caused by a motor vehicle arising out of an accident if the bodily injury:

- (a) is caused while the motorcycle is not in motion;
- (b) subject to subsection (4), is caused:
 - (i) by, or by the use of, a device that can be operated independently of the motorcycle and that is mounted on or attached to the motorcycle; or
 - (ii) by any other prescribed vehicle;
- (c) is caused by the autonomous act of an animal that is part of the motorcycle's load;
- (d) is caused by an action performed by the motorcycle owner in connection with the maintenance, repair, alteration or improvement of the motorcycle;
- (e) is caused while putting a load on or taking a load off the motorcycle; or
- (f) is caused as the result of a contest, show or race on a track or other location temporarily or permanently closed to all other vehicle traffic, whether or not the motor vehicle that caused the bodily injury is participating in the race, contest or show.

(3) A motorcycle owner who is entitled to benefits pursuant to this Part is not entitled to benefits pursuant to Part II or Part VIII other than a death benefit relating to the death of an insured.

(4) Clause (2)(b) does not apply if a motor vehicle in motion is involved in the accident.

2015, c.28, s.9.

Motorcycle election

35.12(1) A motorcycle owner may provide the insurer with a motorcycle election.

(2) A motorcycle owner must make a separate motorcycle election for each motorcycle owned by the motorcycle owner.

(3) Subject to subsections (5) and (6), a motorcycle election must be made personally by the motorcycle owner who intends to be bound by the election.

(4) A motorcycle owner may not make a motorcycle election pursuant to subsection (1) if:

- (a) he or she has made a tort election pursuant to sections 40.2 and 40.3;
- (b) his or her motorcycle is registered in more than one name; or
- (c) the motorcycle that would be the subject of the motorcycle election is of a type, size or class of motor vehicle, or is owned by a class of persons, that is prohibited in the regulations from providing a motorcycle election.

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

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

c. A-35**AUTOMOBILE ACCIDENT INSURANCE****Meaning of motorcycle election**

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

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

2015, c.28, s.9.

DIVISION 2**General and Rehabilitation Benefits****Medical or rehabilitation benefits**

35.14(1) Subject to the maximum benefit amounts mentioned in subsections (3) and (4), an insured is entitled to reimbursement for all medical services authorized by the insurer, including:

- (a) surgical, dental, hospital, ambulance or professional nursing services; and
 - (b) any necessary physical therapy, chiropractic treatments, occupational therapy, speech therapy, prosthesis or orthosis.
- (2) The amount of a benefit pursuant to subsection (1) is the amount of the expense that the insured is not entitled to be reimbursed for pursuant to any other Act.
- (3) The maximum benefit amount payable pursuant to this section is \$25,834 unless the insured sustains a catastrophic injury.
- (4) If an insured sustains a catastrophic injury, the maximum benefit amount payable pursuant to this section is \$193,762.

2015, c.28, s.9.

DIVISION 3**Weekly Benefits****Total disability for employed persons within 104 weeks**

35.2(1) Subject to section 35.26, an insured is entitled to a weekly benefit if:

- (a) either:
 - (i) the insured is employed; or
 - (ii) the insured was actively engaged in an employment for wages or profit in the 12 months preceding the accident; and
- (b) within 20 days after the accident, the bodily injury sustained in the accident totally and continuously disables the insured from engaging in an employment for which the insured is reasonably suited by education, training or experience.

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

- (2) The insurer shall pay a weekly benefit pursuant to this section for the lesser of:
 - (a) the duration of the insured's total and continuous disability; and
 - (b) 104 weeks following the accident.
- (3) Subject to subsection (4), the amount of the weekly benefit payable pursuant to this section is \$388.
- (4) If an insured has been employed for less than six months in the 12 months preceding the accident, the amount of the weekly benefit payable by the insurer is the lesser of:
 - (a) one-half of the amount mentioned in subsection (3); and
 - (b) the amount obtained when the total earnings of the insured in the 12 months preceding the accident are divided by the number of weeks the insured worked.

2015, c.28, s.9.

Partial disability for employed persons within 104 weeks

35.21(1) Subject to section 35.26, an insured is entitled to a weekly benefit pursuant to this section if:

- (a) either:
 - (i) the insured is employed; or
 - (ii) the insured was actively engaged in an employment for wages or profit in the 12 months preceding the accident; and
 - (b) within 20 days after the accident, the bodily injury sustained in the accident partially and continuously disables the insured from engaging in one or more of the essential daily duties of:
 - (i) his or her employment; or
 - (ii) an employment for which the insured is reasonably suited by education, training or experience.
- (2) The insurer shall pay a weekly benefit pursuant to this section for the lesser of:
 - (a) the duration of the insured's partial and continuous disability; and
 - (b) 104 weeks following the accident.
 - (3) Subject to subsection (4), the amount of the weekly benefit payable pursuant to this section is \$194.
 - (4) If an insured has been employed for less than six months in the 12 months preceding the accident, the amount of a weekly benefit payable by the insurer is the lesser of:
 - (a) one-half of the amount mentioned in subsection (3); and
 - (b) the amount obtained when the total earnings of the insured in the 12 months preceding the accident are divided by the number of weeks the insured worked.

2015, c.28, s.9.

c. A-35**AUTOMOBILE ACCIDENT INSURANCE****Total disability for employed persons after 104 weeks**

35.22(1) Subject to section 35.26, an insured is entitled to a weekly benefit pursuant to this section if:

- (a) either:
 - (i) the insured was employed at the date of the accident; or
 - (ii) the insured was actively engaged in an employment for wages or profit for any six months or more during the 12 months preceding the date of the accident;
 - (b) the insured received a weekly benefit pursuant to section 35.2 for the first 104 weeks following the accident; and
 - (c) the bodily injuries sustained in the accident have permanently and continuously disabled the insured from engaging in any employment for which the insured is reasonably suited by education, training or experience.
- (2) The insurer shall pay a weekly benefit pursuant to this section for the duration of the insured's permanent and continuous disability.
- (3) The amount of the weekly benefit payable pursuant to this section is \$388.

2015, c.28, s.9.

Total disability for homemaker within 104 weeks

35.23(1) An insured is entitled to a weekly benefit pursuant to this section if:

- (a) the insured is a homemaker; and
 - (b) within 20 days after the accident, the bodily injury sustained in the accident totally and continuously disables the insured from performing every household duty.
- (2) The insurer shall pay a weekly benefit pursuant to this section for the lesser of:
- (a) the duration of the insured's total and continuous disability; and
 - (b) 104 weeks following the accident.
- (3) The amount of the weekly benefit payable pursuant to this section is \$388.

2015, c.28, s.9.

Partial disability for homemaker within 104 weeks

35.24(1) An insured is entitled to a weekly benefit pursuant to this section if:

- (a) the insured is a homemaker; and
- (b) within 20 days after the accident, the bodily injury sustained in the accident partially and continuously disables the insured from performing one or more important daily household duties.

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

- (2) The insurer shall pay a weekly benefit pursuant to this section for the lesser of:
- (a) the duration of the insured's partial and continuous disability; and
 - (b) 104 weeks following the accident.
- (3) The amount of the weekly benefit payable pursuant to this section is \$194.

2015, c.28, s.9.

Confinement benefit

- 35.25(1)** An insured is entitled to a weekly benefit pursuant to this section if:
- (a) the insured is not entitled to a weekly benefit pursuant to section 35.2 or 35.23;
 - (b) within 20 days after the accident, the bodily injury sustained in the accident:
 - (i) totally and continuously disables the insured; and
 - (ii) pursuant to instructions from a prescribed practitioner, confines the insured to a hospital, bed or wheelchair.
- (2) The insurer shall pay a weekly benefit pursuant to this section for the lesser of:
- (a) the duration of the insured's confinement; and
 - (b) 52 weeks following the accident.
- (3) The amount of the weekly benefit payable pursuant to this section is \$194.

2015, c.28, s.9.

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

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

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

where:

AVWE is the insured's average aggregate weekly earnings in the 12 months preceding the accident;

PWB is the prescribed weekly benefit that would otherwise be payable to the insured pursuant to section 35.2, 35.21 or 35.22 but for this section; and

OB is the total benefits payable to the insured with respect to the accident.

c. A-35**AUTOMOBILE ACCIDENT INSURANCE**

(3) If, as the result of applying subsection (2), the reduced weekly benefit received by the insured would be less than the weekly benefit otherwise payable, the insurer shall pay to the insured the positive difference between the weekly benefit and the reduced weekly benefit.

2015, c.28, s.9.

DIVISION 4
Death and Funeral Benefits

Weekly death benefits

35.3(1) If an insured dies as a result of an accident, a spouse is entitled to a weekly death benefit in an amount DB calculated in accordance with the following formula:

$$DB = (45\% \times NI)$$

where NI is equivalent to the insured's weekly net income at the date of the accident, as calculated in the prescribed manner.

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

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

(4) Subject to subsection (7), if at the date of the accident the insured had a dependant, the insurer shall pay a weekly death benefit for the care and maintenance of the insured's dependant in the amount DB calculated in accordance with the following formula:

$$DB = (5\% \times NI) \times DC$$

where:

NI is equivalent to the insured's weekly net income at the date of the accident, as calculated in the prescribed manner; and

DC is the number of the insured's dependants.

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

(6) Notwithstanding subsection (5), the insurer may pay the weekly death benefit for the dependant to the Public Guardian and Trustee if:

- (a) the dependant does not reside with the spouse; or
- (b) in the insurer's opinion, the spouse has neglected or abandoned the dependant.

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

- (a) the dependant reaches 21 years of age;
- (b) the dependant dies.

2015, c.28, s.9.

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

Weekly death benefits – dependant

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

(2) If the insured is the sole parent of a dependant, the dependant is entitled to the weekly death benefit mentioned in section 35.3 as if the dependant were the spouse of the insured.

(3) If, at the date of the accident, the surviving parent of the dependant is not entitled to the weekly death benefit set out in subsection 35.3(1), the dependant is entitled to the weekly death benefit mentioned in subsection 35.3(1) as if the dependant were the spouse of the insured.

(4) In the case of a person who is a dependant, the weekly death benefit mentioned in subsection (1), (2) or (3) is payable only until whichever of the following occurs first:

- (a) the dependant reaches 21 years of age;
- (b) the dependant dies.

(5) If there is more than one dependant, the weekly death benefits mentioned in this section are to be paid in the prescribed manner.

2015, c.28, s.9.

Capitalization of weekly death benefits

35.32(1) A spouse or a dependant who is entitled to a weekly death benefit pursuant to section 35.3 or 35.31 may elect to have the weekly death benefit capitalized and, subject to the regulations, paid out as a lump sum.

(2) Subject to the regulations, an election pursuant to subsection (1) must be made within five years after the date of the death of the insured and is not revocable.

(3) The insurer shall undertake the capitalization in the prescribed manner.

2015, c.28, s.9.

Lump sum death benefit

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

(2) Notwithstanding any other Act or law, if the insured, the insured's spouse and the insured's dependant die from injuries sustained in the same accident:

- (a) they are all deemed to have died at the same time for the purposes of determining the availability of death benefits pursuant to this Part; and
- (b) for the purposes of sections 35.3 and 35.31, there is deemed to be no spouse or dependant.

2015, c.28, s.9.

Funeral benefit

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

2015, c.28, s.9.

c. A-35**AUTOMOBILE ACCIDENT INSURANCE****DIVISION 5****Permanent Impairment Benefits****Permanent impairment benefits**

35.4(1) An insured who suffers a permanent impairment as a result of an accident is entitled to a lump sum benefit for the permanent impairment.

(2) Notwithstanding subsection (1), a lump sum benefit is not payable if the insured dies of a cause related to the accident.

(3) If the insured dies of a cause unrelated to an accident and, on the date of his or her death, the insured is suffering a permanent impairment as a result of the accident, the insurer shall:

- (a) estimate the amount of the lump sum benefit that it would have awarded to the insured if the insured had not died; and
- (b) pay the lump sum benefit to the insured's estate.

2015, c.28, s.9.

Evaluation of permanent impairment

35.41(1) The insurer shall evaluate an insured's permanent impairment as a percentage that is determined on the basis of the prescribed schedule of permanent impairments.

(2) If an insured's permanent impairment is not listed on the prescribed schedule of permanent impairments, the insurer shall determine a percentage for the permanent impairment using the prescribed schedule as a guide.

2015, c.28, s.9.

Calculation of lump sum benefit

35.5(1) If an insured suffers a permanent impairment, the insurer shall calculate the lump sum benefit in the manner set out in this section.

(2) For the purposes of subsection (1), the amount of a lump sum benefit is the amount PI calculated in accordance with the following formula:

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

where P is the percentage determined pursuant to section 35.41.

(3) Notwithstanding subsection (2), if the insured is determined to have suffered a permanent impairment that includes a catastrophic injury, the amount of the lump sum benefit for a permanent impairment payable pursuant to this Division is the amount CPI calculated in accordance with the following formula:

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

where P is the percentage determined pursuant to section 35.41.

2015, c.28, s.9.

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

DIVISION 6
Claims

Application for benefits

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

2015, c.28, s.9.

Time limits for applying

35.61(1) Subject to subsections (2) to (5), a claimant must apply for a benefit:

- (a) within two years after the date of the accident on which the claim is based; or
 - (b) within two years after the date on which an observation of symptoms of a bodily injury is first made by a practitioner if those symptoms are not apparent immediately after the accident but are observed by the practitioner within two years after the date of the accident.
- (2) In the case of an application for a benefit based on the death of an insured, the claimant must apply within two years after the date of the insured's death.
- (3) If a claimant is a minor on the date of the accident on which the claim is based, the claimant must apply for a benefit within two years after the date on which the claimant reaches 18 years of age.
- (4) The time limits set out in this section are postponed for a claimant who lacks the capacity to manage his or her estate until the claimant:
- (a) has capacity to manage his or her estate; or
 - (b) is represented by a personal guardian or property guardian appointed or continued pursuant to *The Public Guardian and Trustee Act* or *The Adult Guardianship and Co-decision-making Act* who is aware of a claim and has the legal capacity to make the claim on behalf of the claimant.
- (5) The insurer may waive a time limit set out in this section if it is satisfied that the claimant had a reasonable excuse for failing to apply within the time limit.

2015, c.28, s.9.

Release of information

35.62(1) A claimant shall provide any information, and any authorization necessary to obtain that information, that is requested by the insurer for the purposes of this Part.

- (2) The insurer shall, as soon as is practicable, release to a claimant, at the claimant's request, all of the insurer's information concerning the claimant and his or her claim that the claimant:
- (a) is entitled by law to receive; and
 - (b) may reasonably require for the purposes of this Part.

2015, c.28, s.9.

c. A-35**AUTOMOBILE ACCIDENT INSURANCE****Examination by practitioner**

35.63(1) If requested to do so by the insurer, an insured shall undergo an examination by a practitioner chosen by the insured.

(2) If requested to do so by the insurer, an insured shall undergo an examination by a practitioner chosen by the insurer.

(3) Subject to the regulations, the insurer shall pay for all reasonable and authorized expenses incurred by the insured to undergo an examination pursuant to this section.

(4) A practitioner shall conduct an examination pursuant to this section in accordance with the regulations.

(5) The insurer may request an examination pursuant to this section as often as it may reasonably require while a claim pursuant to this Part is pending.

(6) In the case of the death of a claimant, the insurer may request any medical report that is prepared as a result of any autopsy conducted with respect to that death.

2015, c.28, s.9.

Report of examination

35.64(1) A practitioner who examines an insured at the request of the insurer pursuant to section 35.63 shall provide the insurer with a written report on the condition of the insured and on any other related matter requested by the insurer.

(2) If the insurer obtains a report respecting an examination conducted pursuant to section 35.63, the insurer, at the request of the insured who underwent the examination, shall provide a copy of the report to any practitioner designated by the insured.

2015, c.28, s.9.

Proof of salary

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

2015, c.28, s.9.

Report of accident

35.66 Within six days after receiving a written request from the insurer, a practitioner or the person operating the hospital that has either been consulted by an insured or that has treated an insured after the accident shall provide the insurer with a written report respecting:

- (a) the consultation or the treatment; and
- (b) any finding or recommendation relating to the consultation or treatment.

2015, c.28, s.9.

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

Claimant to advise of changes

35.67(1) Every claimant shall notify the insurer without delay of any changes that affect or that might affect:

- (a) his or her right to claim or receive a benefit; or
 - (b) the amount of a benefit that he or she is claiming or receiving.
- (2) For the purposes of subsection (1), a change includes, but is not limited to, a change in the claimant's medical condition.

2015, c.28, s.9.

Insurer to advise and assist claimants

35.68 The insurer shall advise and assist every claimant and shall endeavour to ensure that every claimant is informed of and receives the benefits to which the claimant is entitled.

2015, c.28, s.9.

DIVISION 7

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

No benefits for suicide

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

2015, c.28, s.9.

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

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

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

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

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

2015, c.28, s.9.

c. A-35

AUTOMOBILE ACCIDENT INSURANCE

When Division 3 benefits not payable

35.72(1) Notwithstanding any other provision of this Part, no insured is entitled to any benefit pursuant to Division 3 for any period that the insured is serving a sentence of imprisonment.

(2) If an insured mentioned in subsection (1) is acquitted of the offence for which the imprisonment was served, the insurer shall pay to the insured the amount of the benefit that would have been paid to him or her if he or she had not been imprisoned, together with interest pursuant to the regulations, from the day the benefit was suspended until the day of payment.

(3) Notwithstanding any other provision of this Part, an insured is not entitled to any benefit pursuant to Division 3 in the following circumstances:

- (a) the insured is more than 50% responsible for the accident; and
- (b) either:
 - (i) the insured:
 - (A) has been convicted of:
 - (I) an offence pursuant to paragraph 253(1)(a) or (b), subsection 254(5) or subsection 255(2) or (3) of the the *Criminal Code*; or
 - (II) an offence pursuant to a law of a state of the United States of America substantially similar to an offence mentioned in subparagraph (I); and
 - (B) on at least one other occasion within the five years before the accident, has been convicted of an offence listed in this clause as a result of the operation of a motor vehicle; or
 - (ii) the insured was the operator of a motor vehicle who:
 - (A) intentionally caused or attempted to cause bodily injury to another person; and
 - (B) has been convicted of:
 - (I) an offence set out in section 235, 236, 239, 249, 266, 267, 268 or 269 of the *Criminal Code* as a result of the operation of a motor vehicle; or
 - (II) an offence pursuant to a law of a state of the United States of America substantially similar to an offence mentioned in subparagraph (I).

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

When permanent impairment benefits not payable

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

- (a) the insured, at the time of the accident:
 - (i) was the operator or had the care and control of a motor vehicle involved in the accident; and
 - (ii) was under the influence of alcohol or drugs to such an extent that the insured was incapable for the time being of having proper control of the motor vehicle;
- (b) the insured was convicted, with respect to the accident, of:
 - (i) an offence pursuant to paragraph 253(1)(a) or (b), subsection 254(5) or subsection 255(2) or (3) of the *Criminal Code*; or
 - (ii) an offence pursuant to a law of a state of the United States of America substantially similar to an offence mentioned in subclause (i); or
- (c) the insured was the operator of a motor vehicle involved in the accident who:
 - (i) intentionally caused or attempted to cause bodily injury to another person; and
 - (ii) was convicted of:
 - (A) an offence set out in section 235, 236, 239, 249, 266, 267, 268 or 269 of the *Criminal Code* as a result of the operation of a motor vehicle; or
 - (B) an offence pursuant to a law of a state of the United States of America substantially similar to an offence mentioned in paragraph (A).

2015, c.28, s.9.

Proof of conviction

35.74 For the purposes of sections 35.71, 35.72 and 35.73, a certificate purporting to be signed by a judge of the convicting court or other officer having custody of the records of the convicting court certifying that the insured has been convicted of an offence mentioned in section 35.71, 35.72 or 35.73 is admissible in evidence as proof, in the absence of evidence to the contrary, of the conviction of the insured without proof of the signature or official character of the person appearing to have signed the certificate.

2015, c.28, s.9.

c. A-35**AUTOMOBILE ACCIDENT INSURANCE****When insurer may refuse to pay or may reduce, suspend or terminate benefits**

35.75 The insurer may refuse to pay a benefit to a beneficiary or may reduce the amount of a benefit or suspend or terminate the benefit if the beneficiary:

- (a) knowingly provides false or inaccurate information to the insurer;
- (b) refuses or neglects to produce information required by the insurer for the purposes of this Part or to provide an authorization reasonably required by the insurer to obtain the information;
- (c) without valid reason, refuses to return to his or her former employment, leaves an employment that he or she could continue to hold or refuses a new employment;
- (d) without valid reason, neglects or refuses to undergo an examination by a practitioner, or interferes with an examination by a practitioner, requested or required by the insurer;
- (e) without valid reason, refuses, does not follow or is not available for treatment recommended by a practitioner and the insurer;
- (f) without valid reason, prevents or delays recovery by his or her activities;
- (g) without valid reason, does not follow or participate in a rehabilitation program; or
- (h) prevents or obstructs the insurer from exercising any of its rights of recovery or subrogation pursuant to this Part.

2015, c.28, s.9.

Payment of benefits

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

(2) If an insured suffers a catastrophic injury, the insured is entitled to receive the benefits mentioned in subsection (1) from the first day after the accident.

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

(4) The insurer shall pay a weekly death benefit to a spouse or dependant once every 14 days subject to the spouse's or dependant's election to obtain a lump sum benefit.

(5) The insurer may request that a beneficiary provide it with receipts before paying a benefit and, if the insurer makes that request, a beneficiary is eligible to receive the benefit only after receipts that are satisfactory to the insurer are submitted.

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

- (6) The insurer shall pay a benefit related to reimbursing expenses to a beneficiary.
- (7) If a benefit is payable to a beneficiary, but not paid on or before the day he or she dies, the insurer shall pay the benefit to the beneficiary's estate.
- (8) If a beneficiary who is entitled to a benefit has a personal or property guardian appointed or continued pursuant to *The Public Guardian and Trustee Act* or *The Adult Guardianship and Co-decision-making Act* who is authorized to receive the payment, the insurer shall pay the benefit to the personal or property guardian.
- (9) Notwithstanding any provision to the contrary, the insurer may, at any time, elect to pay a benefit to the Public Guardian and Trustee if the Public Guardian and Trustee is authorized by law to accept the payment.
- (10) The insurer shall calculate the benefits payable pursuant to Divisions 2, 4 and 5 as of the date of the accident.

2015, c.28, s.9.

When payment for catastrophic injury may be made

35.761(1) If the nature of an insured's bodily injury prevents the insurer from determining if the insured suffered a catastrophic injury at the date of the accident, the insurer is not obligated to pay the insured benefits pursuant to this Part on the basis of a catastrophic injury until the medical information indicates that the insured suffered a catastrophic injury.

(2) When the medical information indicates that an insured suffered a catastrophic injury, the insurer shall, if applicable:

- (a) pay benefits to the insured on the basis of a catastrophic injury; and
- (b) pay to the insured any additional benefit that would have been paid to him or her as if the catastrophic injury assessment was made at the date of the accident together with interest calculated in accordance with the regulations.

2015, c.28, s.9.

Accidents outside Saskatchewan

35.77 If an insured or insured's spouse or dependant is entitled to benefits respecting an accident that occurred outside Saskatchewan, the insurer is subrogated to that insured's or insured's spouse's or dependant's rights and is entitled to recover the amount of those benefits from:

- (a) any person who is not resident in Saskatchewan and who is responsible for the accident pursuant to the law of the place where the accident occurred; or
- (b) any other person who is liable to pay compensation for bodily injuries caused by a person described in clause (a).

2015, c.28, s.9.

c. A-35**AUTOMOBILE ACCIDENT INSURANCE****Subrogation re accidents in Saskatchewan**

35.78(1) If an insured or insured's spouse or dependant is entitled to benefits pursuant to this Act respecting an accident, the insurer has the right to recover the amount of the benefits from:

- (a) any person who is not resident in Saskatchewan and who is responsible for the accident, to the extent that he or she is responsible for the accident; and
 - (b) any other person who is liable to pay compensation for bodily injury caused by the person described in clause (a).
- (2) For the purpose of applying *The Limitations Act* to an action pursuant to this section, the day on which the act or omission on which the claim is based takes place is the day on which the insurer makes the first benefit payment to the insured or to the insured's spouse or dependant.

2015, c.28, s.9.

No enforcement

35.79(1) Subject to section 11.1, the regulations and *The Enforcement of Maintenance Orders Act, 1997*, benefits, other than weekly benefits paid pursuant to section 35.2, 35.21, 35.22, 35.23, 35.24 or 35.25, are exempt from garnishment, seizure, attachment, execution and any other process or claim.

(2) A beneficiary who is entitled to any benefits, other than weekly benefits pursuant to section 35.2, 35.21, 35.22, 35.23, 35.24 or 35.25, may not assign the benefits to another person, and any purported assignment is void.

2015, c.28, s.9.

DIVISION 8**Indexation of Benefits****Interpretation of Division**

35.8(1) In this Division, “**consumer price index**” means the consumer price index mentioned in subsections (2) to (4).

(2) Subject to subsections (3) and (4), in this Division, the consumer price index is the “all-items” Consumer Price Index for Saskatchewan as published monthly by Statistics Canada.

(3) If no figure for the ‘all-items’ Consumer Price Index for Saskatchewan is published by Statistics Canada for a month, the insurer shall determine a figure for that month in accordance with the regulations.

(4) If, after the day on which this Part comes into force, Statistics Canada uses a new method to determine the ‘all-items’ Consumer Price Index for Saskatchewan for a particular month and the new method results in a change of more than 1% when compared with the former method, the insurer shall determine a figure in accordance with the regulations.

2015, c.28, s.9.

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

Timing of required adjustments

35.81(1) Subject to subsection (2), the insurer shall adjust the benefit amounts set out in this Part on January 1 of each year.

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

2015, c.28, s.9.

Calculation of adjustment

35.82(1) Subject to section 35.83, if an amount is to be adjusted pursuant to this Division, the adjusted amount is the amount AM calculated in accordance with the following formula:

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

where:

A is the amount to be adjusted;

CPICY is the consumer price index for the year in which the adjustment is being made; and

CPIPY is the consumer price index for the previous year.

(2) For the purposes of this section, the consumer price index for a year is the average of the consumer price indices for the 12 months preceding October 1 of the previous year.

(3) If the average of the monthly consumer price indices for a year includes more than one decimal, only the first digit is to be retained, and it is to be increased by one unit if the second digit is greater than four.

(4) If the ratio between the consumer price index for the current year and the consumer price index for the previous year includes more than three decimals, only the first three digits are to be retained, and the third digit is to be increased by one unit if the fourth digit is greater than four.

(5) After adjusting pursuant to this section, the insurer shall round the resulting amount to the nearest dollar.

2015, c.28, s.9.

Cap on adjustments

35.83(1) Subject to subsection (2), if the ratio between the consumer price index for the current year and the consumer price index for the previous year exceeds 1.06:1, the ratio is deemed to be 1.06:1.

(2) If authorized by the regulations, the insurer may use the ratio calculated pursuant to section 35.82 even though the ratio between the consumer price index for the current year and the consumer price index for the previous year exceeds 1.06:1.

2015, c.28, s.9.

c. A-35**AUTOMOBILE ACCIDENT INSURANCE****DIVISION 9
Recovery of Benefits****Overpayment**

35.84(1) The following payments are overpayments pursuant to this Part:

- (a) a benefit payment made under a mistake of fact or as a result of an error on behalf of the insurer that is in excess of a benefit to which the person is entitled or that provides the person with a benefit the person is not otherwise entitled to receive;
 - (b) a benefit payment made to a person who prevents or obstructs the insurer from exercising any of its rights of subrogation pursuant to this Part;
 - (c) any benefit obtained by fraud.
- (2) A person who has received an overpayment pursuant to this Part shall repay the amount of the overpayment to the insurer.
- (3) An overpayment pursuant to this Part is a debt due to the insurer, and the insurer may recover an overpayment:
- (a) by deducting the amount of the overpayment from any other payments that the insurer owes to that person; and
 - (b) by any other means allowed by law.

2015, c.28, s.9.

Time limits for recovery

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

- (a) the day on which the amount of the overpayment was paid to the person;
- (b) if the amount of the overpayment was paid as a result of fraud, the day on which the fraud is first known or discovered by the insurer; or
- (c) if the person to whom the benefits were paid has prevented or obstructed the insurer from exercising its rights of subrogation, the day on which the insurer knows about or first discovers an act or omission of that person relating to the prevention or obstruction.

2015, c.28, s.9.

Cancellation of overpayment

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

2015, c.28, s.9.

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

Certain amounts not overpayments

35.87 Notwithstanding section 35.84, the following amounts are not overpayments for the purposes of this Part:

- (a) any benefits paid in advance by the insurer before making a decision respecting the claimant's entitlement, unless the benefits were obtained by fraud;
- (b) any benefits paid by the insurer before a decision of a court to cancel the benefit or reduce the amount of the benefit, unless the benefits were obtained by fraud;
- (c) any benefits paid by the insurer before a decision of the insurer to cancel the benefit or reduce the amount of the benefit, unless the benefits were obtained by fraud.

2015, c.28, s.9.

DIVISION 10

Compensation Pursuant to Other Plans

Private insurance claims not affected

35.9 This Part does not limit or affect the rights of any person who claims or receives a benefit to claim compensation pursuant to a private insurance scheme.

2015, c.28, s.9.

Exemptions – when insurer not to pay benefits pursuant to this Part

35.91(1) Notwithstanding any other provision of this Part, the insurer is not liable to pay any benefits pursuant to this Part to:

- (a) a person who as a result of an accident is entitled to:
 - (i) compensation pursuant to *The Workers' Compensation Act, 2013* or any other Act, or any legislation of any other jurisdiction, that relates to the compensation of persons injured in accidents; or
 - (ii) compensation pursuant to the *National Defence Act* (Canada) or the *Royal Canadian Mounted Police Act* (Canada) or any other Act, or any legislation of any other jurisdiction, that provides for compensation of persons injured in accidents;
- (b) a person who is a resident of another province, state or country; or
- (c) a spouse or dependant of a person mentioned in clause (a) or (b).

c. A-35**AUTOMOBILE ACCIDENT INSURANCE**

- (2) If an insured is entitled to weekly benefits pursuant to section 35.2, 35.21 or 35.22 and the insured becomes entitled to benefits pursuant to the *Employment Insurance Act* (Canada), the insurer is liable only for the amount by which the weekly benefits pursuant to section 35.2, 35.21 or 35.22 exceed the benefits actually received by the insured pursuant to the *Employment Insurance Act* (Canada).
- (3) In no case is the insurer liable pursuant to subsection (2) to pay more than the amounts set out in those sections.

2015, c.28, s.9.

Subrogation for compensation pursuant to other Acts

35.92(1) In this section, “**compensation legislation**” means:

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

(2) Subject to section 41.12, if an insured receives compensation pursuant to compensation legislation, the body authorizing compensation pursuant to compensation legislation:

- (a) is subrogated to the insured’s rights; and
- (b) has the same remedies as the insurer to recover the compensation from any person who is not resident in Saskatchewan and is responsible for the accident, or who is liable to pay compensation for bodily injury caused by the non-resident.

2015, c.28, s.9.

DIVISION 11
General

Substantial compliance with forms and notices

35.93 Substantial compliance with requirements respecting the content of forms, notices or other documents is sufficient unless the insurer is of the opinion that it would result in unfairness to any person.

2015, c.28, s.9.

Rights on subrogation

35.94(1) If the insurer or another body is given a right of subrogation pursuant to this Part by reason of paying or becoming liable to pay a benefit or compensation, the insurer or other body is deemed to be an assignee and is subrogated to all rights of recovery of the person to whom or with respect to whom or for whose benefit the benefit or compensation was paid or is payable.

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

- (2) For the purposes of subsection (1), the insurer or other body may:
- (a) bring an action in its own name to recover the amount of the benefit or compensation paid or payable; or
 - (b) join with the person to whom or with respect to whom or for whose benefit the benefit or compensation was paid or is payable to bring an action in the name of that person for the recovery of damages resulting from the bodily injury caused by a motor vehicle of an insured.

2015, c.28, s.9.

Non-compellability

35.95(1) The insurer or a director, officer, employee or agent of the insurer, is not compellable to give evidence or to produce any documents or other things in a court or in a proceeding of a judicial nature concerning any information that comes to the knowledge of the insurer or a director, officer, employee or agent of the insurer in the exercise of the powers, performance of the duties or carrying out of the functions of the insurer pursuant to this Part.

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

2015, c.28, s.9.

PART III

Comprehensive Insurance and Insurance Money

Application of Part

36 This Part applies to comprehensive insurance and to no other unless expressly provided.

R.S.S. 1965, c.409, s.33; R.S.S. 1978, c.A-35, s.36.

Interpretation

37 In this Part “**insured**” means a person to whom insurance money is payable in the event of loss of or damage to a vehicle resulting from one of the perils mentioned in section 38.

R.S.S. 1965, c.409, s.34; R.S.S. 1978, c.A-35, s.37; 1979, c.69, s.4.

Comprehensive insurance

38(1) Subject to this Act, an owner’s certificate shall further insure the person named therein in the amounts hereinafter specified against direct and accidental loss of or damage to the vehicle designated therein, including its equipment, occurring in Canada, or the United States of America, or upon a vessel travelling between ports thereof, from any peril.

c. A-35**AUTOMOBILE ACCIDENT INSURANCE**

(2) Where loss or damage arises from a peril against which insurance is provided for by subsection (1) the insurer shall, in addition to any other amount payable under this Part, pay to or on behalf of the insured any general average, salvage and fire department charges, and customs duties of the Government of the United States of America, for which the insured is legally liable.

(3) Each occurrence causing loss or damage for which insurance is provided by subsection (1) gives rise to a separate claim in respect of which the liability of the insurer is limited to the amount of loss or damage in excess of the deductible amount fixed by the regulations for a vehicle of the class to which the vehicle that is lost or damaged belongs, but the insurer is not liable under this section for loss or damage:

(a) to tires, unless the loss or damage is coincident with other loss or damage that is insured against pursuant to this section;

(a.1) caused by mechanical fracture or breakdown of any part of the vehicle or by rusting, corrosion, freezing or wear and tear, or explosion within the combustion chamber, unless the loss or damage is coincident with other loss or damage that is insured against pursuant to this section;

(b) caused by the conversion, embezzlement, theft or secretion by a person in lawful possession of the vehicle under a mortgage, conditional sale, lease or other similar written or verbal agreement;

(b.1) caused by or to a motor vehicle in consequence of the operation of a motor vehicle on a surface other than a highway in a test or exhibition of speed, skill, endurance or power;

(c) caused by the voluntary parting with title or ownership, whether or not the parting is induced by a fraudulent scheme, trick, device or false pretence;

(d) caused directly or indirectly by contamination by radio-active material;

(e) to sound equipment or communications equipment located within or attached to the vehicle, other than equipment prescribed in the regulations;

(e.1) to radar warning devices;

(f) to contents of trailers or to rugs or robes;

(g) caused by theft by a person residing in the same dwelling premises as the insured, or by an employee of the insured engaged in the operation, maintenance or repair of the vehicle whether or not the theft occurs during the hours of the employment or service;

(h) to any type of equipment prescribed in the regulations;

(i) of any other type prescribed in the regulations;

(j) that exceeds any limit prescribed in the regulations.

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

(3.1) In clause (3)(e.1), “**radar warning device**” means any device designed or intended for use in a motor vehicle to warn the driver of the presence of radar or laser speed measuring equipment in the vicinity, and includes any device designed or intended for use in a motor vehicle to interfere with the effective operation of radar or laser speed measuring equipment.

(4) The insurer is not liable pursuant to this section for loss or damage with respect to a vehicle that is used or operated by a dealer under a dealer’s certificate issued pursuant to section 68 of *The Traffic Safety Act* unless:

- (a) at the time when the loss or damage occurs the vehicle actually carries a licence plate issued pursuant to *The Traffic Safety Act*; and
- (b) the loss or damage is caused directly by accidental collision of the vehicle with another object either moving or stationary or by accidental upset.

(5) Notwithstanding subsection (4), the insurer is not liable for any loss or damage with respect to a vehicle that is used or operated by a dealer under a dealer’s certificate issued pursuant to section 68 of *The Traffic Safety Act* after its theft and before its recovery.

R.S.S. 1965, c.409, s.35; 1973, c.8, s.15; R.S.S. 1978, c.A-35, s.38; 1980-81, c.34, s.13; 1983, c.82, s.2; 1986, c.33, s.2; 1996, c.9, s.2; 2000, c.5, s.10; 2002, c.44, s.10; 2004, c.T-18.1, s.299; 2004, c.35, s.10.

Statutory conditions

39 Comprehensive insurance in respect of any vehicle shall be subject to the following statutory conditions:

Insured to notify insurer of other insurance

1 Upon the happening of any loss or damage for which insurance is provided under this Part the insured shall promptly notify the insurer of any other insurance of the same interest, whether valid or not, insuring against all or any part of the loss or damage.

Qualified or authorized

1.1 For the purposes of statutory condition 2, a driver is deemed not to be qualified or authorized if:

- (a) his or her ability to apply for or hold a driver’s licence has been cancelled, suspended or revoked by the courts pursuant to the *Criminal Code* or the administrator pursuant to *The Vehicle Administration Act*;
- (b) the driver has been disqualified from driving a motor vehicle pursuant to *The Vehicle Administration Act*; or
- (c) the driver has not renewed his or her driver’s licence and he or she owes money to the insurer pursuant to subsection 6(6) or section 8 or 80.2 of the Act.

Prohibited use of vehicle

2(1) The insured named in an owner’s certificate shall not drive or operate the vehicle designated therein:

- (a) while under the influence of intoxicating liquor or drugs to such an extent as to be for the time being incapable of the proper control of the vehicle;

c. A-35**AUTOMOBILE ACCIDENT INSURANCE**

- (b) while he or she is not for the time being qualified or authorized by law to drive or operate a motor vehicle;
 - (c) in any race or speed test; or
 - (d) with the intent to evade a police officer.
- (2) The insured named in an owner's certificate shall not permit, suffer, allow or connive at the use of the vehicle designated therein:
- (a) by a person under the influence of intoxicating liquor or drugs to such an extent as to be for the time being incapable of the proper control of the vehicle;
 - (b) by a person who is not for the time being qualified or authorized by law to drive or operate a motor vehicle;
 - (c) in a race or speed test; or
 - (d) by a person with the intent to evade a police officer.

Certain other uses prohibited

- 3(1) The vehicle designated in an owner's certificate shall not be operated in violation of the conditions, limitations, restrictions or prohibitions of any law, the regulations made pursuant to any law, the certificate of registration or a permit concerning:
- (a) the combined weight of the vehicle and its load;
 - (b) the purpose for which the vehicle may be used;
 - (c) the time during which the vehicle may be operated;
 - (d) the territory in which the vehicle may be operated;
 - (e) the number of passengers that may be carried on the vehicle; or
 - (f) the number or quantity of goods that may be carried on the vehicle.
- (2) The vehicle designated in an owner's certificate of registration shall not be rented or leased under the arrangement commonly referred to as "U-Drive" or "Auto-Lease" unless the intention to rent or lease the vehicle has been disclosed in the application for the owner's certificate.

War risks excluded

- 4 The insurer shall not be liable for loss or damage that is caused directly or indirectly by bombardment, invasion, civil war, insurrection, rebellion, revolution, military or usurped power, or by operations of armed forces while engaged in hostilities, whether or not war has been declared, or by civil commotion arising from any of the foregoing.

Necessity of reporting

- 5 Where the insured is a person required to furnish a report under section 68, 70 or 72, he shall comply in every particular and the onus of proving such compliance shall be upon him.

Loss of or damage to a vehicle

- 6 Upon the occurrence of any loss or damage to the vehicle designated in an owner's certificate, the insured shall, if the loss or damage is insured against under section 38:
- (a) forthwith give notice thereof in writing to the insurer, in addition to any report that may be required by statutory condition 5, with fullest information obtainable at the time, and shall, at the expense of the insurer, and as far as reasonably possible, protect the vehicle from further loss or damage, and any such further loss or damage accruing directly or indirectly from a failure to protect shall not be recoverable under this Part, and no repairs shall be undertaken or any physical evidence of the loss or damage removed without the written consent of the insurer, except such repairs as are immediately necessary for the protection of the vehicle from further loss or damage, until the insurer has had a reasonable time to make the inspection provided for in statutory condition 11;

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

- (b) deliver to the insurer within ninety days of the loss or damage a statutory declaration stating so far as the insured knows or believes, the place, time, cause and amount of the loss or damage, the interest of the insured and all others therein, the encumbrances thereon, all other insurance whether valid or invalid covering the vehicle, and that the loss or damage did not occur through any wilful act or neglect, procurement, means or connivance of the insured.

Examination of insured

7 The insured shall submit to examination, under oath, and shall produce for examination at such reasonable place as is designated by the insurer or its representative all documents in his possession or control that relate to the matters in question and permit copies thereof and extracts therefrom to be made.

Insurer liability

8(1) The insurer is not liable beyond the lesser of:

- (a) the actual cash value of the vehicle or any part or item of equipment of the vehicle, as the case may be, at the time of the loss or damage, with proper deduction for depreciation; and
 - (b) the maximum value of the vehicle or any part or item of equipment of the vehicle, as the case may be, fixed by the regulations.
- (2) The actual cash value shall in no event exceed what it would cost to repair or replace the vehicle or any part or item of equipment of the vehicle, as the case may be, with material of like kind and quality.
- (3) If any part or item of equipment of the vehicle is obsolete or out of stock, the liability of the insurer in respect of that part or item of equipment, as the case may be, is limited to the lesser of:
- (a) the value of that part or item of equipment at the time of the loss or damage; and
 - (b) the value of that part or item of equipment as shown in the manufacturer's last price list.
- (4) Instead of making payment in accordance with subsection (1), the insurer may, within a reasonable time after receipt of the proofs of loss, elect to:
- (a) repair or rebuild; or
 - (b) replace with other property of like kind and quality;
- the property damaged or lost.
- (5) Subsection (4) of this statutory condition does not apply where there has been an appraisal in accordance with statutory condition 9.

Payment and salvage

- 8.1(1) Where the insurer elects to make payment in accordance with statutory condition 8(1), it may elect to take the salvage, but the insured may not abandon the salvage to the insurer without the consent of the insurer.
- (2) Subject to subsection (3), where the insurer elects to take the salvage, the salvage becomes the property of the insurer.
- (3) Where:
- (a) the insurer elects to make payment in accordance with statutory condition 8(1);
 - (b) the amount of the loss or damage is greater than the maximum value of the vehicle fixed by the regulations or the maximum amount to which the insurer is required to insure; and

c. A-35**AUTOMOBILE ACCIDENT INSURANCE**

- (c) there is in force on the vehicle other valid insurance extending to indemnify the insured in excess of the insurer's liability pursuant to this Part;

the proceeds from the disposition of the salvage after deduction of reasonable expenses for storage, transportation, handling and sale is to be divided in the proportion in which the loss or damage has been borne pursuant to this Part and pursuant to the other insurance.

In case of disagreement

9(1) If the insured and the insurer disagree respecting any of the following questions, they must resolve the disagreement in accordance with this section:

- (a) a question as to the nature and extent of the repairs and replacements required;
 - (b) a question as to the adequacy of the repairs and replacements required;
 - (c) a question as to the amount payable respecting any loss or damage.
- (2) A determination of a question mentioned in subsection (1) must be made before recovery can be had pursuant to this Part:
 - (a) whether or not the right to recover pursuant to this Part is in dispute; and
 - (b) independently of all other questions.
- (3) The insured and the insurer shall each select one appraiser and advise the other of the appraiser each has chosen.
- (4) For the purposes of subsection (3):
 - (a) the insurer may appoint an employee of the insurer to act as an appraiser for the insurer; or
 - (b) the insured may act as an appraiser on the insured's own behalf.
- (5) The two appraisers appointed pursuant to subsection (3) shall select an independent umpire.
- (6) A judge of the Court of Queen's Bench may appoint an appraiser or an umpire on the application of the insured or the insurer if:
 - (a) either party fails to appoint an appraiser within seven days of being served with a written request to do so by the other party;
 - (b) the appraisers fail to agree on an umpire within 15 days after their appointment; or
 - (c) the person selected as umpire refuses to act or is incapable of acting.
- (7) The two appraisers shall, as the case may be:
 - (a) estimate or appraise the loss or damage stating separately the value of and damage to the vehicle; or
 - (b) determine the adequacy of the repairs and replacements.
- (8) If the appraisers are unable to agree, they shall submit the matter to the umpire.
- (9) An award may be determined by the two appraisers or by one appraiser and the umpire.
- (10) An award pursuant to subsection (9) is deemed to be a final determination of, as the case may be:
 - (a) the amount payable respecting any loss or damage;
 - (b) the nature and extent of the repairs and replacements required; or

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

- (c) the adequacy of the repairs and replacements.
- (11) The insurer and the insured shall:
 - (a) pay the cost of the appraiser each has selected; and
 - (b) share equally the costs of the appraisal and the umpire.

Waiver

10 Neither the insurer nor the insured shall be deemed to have waived any term or condition of this Part by any act relating to the appraisal or to the delivery and completion of proofs of loss, or to the investigation or adjustment of the claim.

Inspection of motor vehicles

11(1) The insurer shall be permitted, at all reasonable times, to inspect any motor vehicle designated in an owner's certificate and its equipment.

(2) If a motor vehicle has an onboard computer or sensing diagnostic module installed in the motor vehicle, the insurer is entitled to examine the contents of the onboard computer or sensing diagnostic module and make a copy of any information contained on the onboard computer or sensing diagnostic module.

(3) The insurer may use any information collected pursuant to this section to determine a claimant's entitlement to benefits pursuant to this Part.

Other insurance

12(1) If the insured named in an owner's certificate has or places any additional or other valid insurance extending to indemnify him against loss or damage that but for this condition would be within the limits of the insurer's liability under this Part, the insurer shall not be liable to pay any insurance moneys in respect of such loss or damage.

(2) Where the Superintendent of Insurance in the exercise of any general or special power conferred upon him by *The Saskatchewan Insurance Act* approves a form of policy of automobile insurance that purports to limit the liability of the insurer thereunder to an amount in excess of the amount payable under this Part by the insurer under this Act nothing in subsection (1) of this condition affects the validity of that policy and where such a policy is in effect the insurer's liability under this Part shall be ascertained as if no other insurance were in effect.

Time and manner of payment of insurance money

13 The insurer shall pay any insurance money for which it is liable within sixty days after the proof of loss has been received by it, or, where an appraisal is had under statutory condition 9, within fifteen days after the award is rendered.

14 Repealed. 2004, c.L-16.1, s.34.

Who may give notice and proof of claim

15 Notice of claim may be given and proof of claim may be made by the agent of the insured named in a certificate in case of absence or inability of the insured to give the notice or make the proof, the absence or inability being satisfactorily accounted for, or in the like case, or if the insured refuses to do so, by a person to whom any part of the insurance money is payable.

R.S.S. 1965, c.409, s.36; 1968, c.7, s.6; 1973, c.8, s.16; 1973-74, c.4, s.5; R.S.S. 1978, c.A-35, s.39; 1979-80, c.92, s.9; 1984-85-86, c.1, s.26; 1998, c.18, s.10; 2000, c.5, s.11; 2002, c.44, s.11; 2004, c.35, s.11; 2004, c.L-16.1, s.34.

c. A-35**AUTOMOBILE ACCIDENT INSURANCE**

PART IV
Bodily Injury and Property Damage Liability

DIVISION 1
Interpretation of Part

Interpretation of Part

40 In this Part and section 81, “**third party**” means:

- (a) a motor vehicle manufacturer;
- (b) a maker or supplier of motor vehicle parts;
- (c) a person engaged in the business of selling motor vehicles;
- (d) a person engaged in the business of, or whose business includes, a motor vehicle garage, repair shop or service station;
- (e) the holder of a restaurant permit or a tavern permit issued pursuant to *The Alcohol and Gaming Regulation Act, 1997* authorizing the permit holder to deal in beverage alcohol; or
- (f) any other prescribed person or member of a prescribed class of persons.

2015, c.28, s.10.

DIVISION 2
Limits on Actions and Tort Election

Actions for bodily injury prohibited

40.1 Notwithstanding any other Act or law but subject to Part II.1, this Part, Part VI and Part VIII:

- (a) no person has any right of action respecting, arising out of or stemming from bodily injuries caused by a motor vehicle arising out of an accident that occurs on or after the day this Part comes into force; and
- (b) no action or proceeding lies or may be commenced in any court respecting, arising out of or stemming from bodily injuries caused by a motor vehicle arising out of an accident that occurs on or after the day this Part comes into force.

2002, c.44, s.13; 2015, c.28, s.11.

Tort election

40.2(1) A Saskatchewan resident may provide the insurer with a tort election that sets out that resident’s intention to:

- (a) elect to obtain coverage pursuant to Part II;
- (b) waive the resident’s right to obtain benefits pursuant to Part II.1 or Part VIII; and
- (c) elect to bring an action for loss or damage for bodily injury caused by a motor vehicle arising out of an accident.

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

- (2) Every Saskatchewan resident who wishes to make a tort election shall serve on the insurer a completed tort election form in accordance with section 40.3.
- (3) A tort election applies only with respect to accidents that occur after the date the insurer receives the tort election.
- (4) Notwithstanding section 40.1 but subject to sections 41 and 41.1 of this Act and section 43 of *The Workers' Compensation Act, 2013*, a tort election received by the insurer entitles the person named in it to bring an action for loss or damage respecting, arising out of or stemming from bodily injury caused by a motor vehicle arising out of an accident.
- (5) A tort election received by the insurer is only effective as at the date and time it is received and the tort election remains in effect until:
 - (a) it is revoked; or
 - (b) the person ceases to be a Saskatchewan resident.
- (6) Notwithstanding any other provision of this Act, no occupant of a stolen motor vehicle involved in an accident that occurs on or after the coming into force of this subsection, and no spouse or dependant of the occupant of the stolen motor vehicle claiming through, on behalf of or as a dependant of the occupant of the stolen motor vehicle, is entitled to bring an action for loss or damage respecting, arising out of or stemming from bodily injury caused by the motor vehicle arising out of the accident.

2002, c.44, s.13; 2004, c.35, s.13; 2011, c.3, s.5;
2013, c.W-17.11, s.190; 2015, c.28, s.12.

Rules respecting tort election

40.3(1) A tort election must be:

- (a) in writing; and
 - (b) in the form provided by the insurer.
- (2) Subject to subsections (3) and (4), a tort election must be made by the person who intends to be bound by the election.
 - (3) If a person is below the age of majority, a tort election for that person may only be made by his or her legal custodian.
 - (4) If a person has a personal or property guardian appointed or continued pursuant to *The Public Guardian and Trustee Act* or *The Adult Guardianship and Co-decision-making Act*, a tort election for that person may only be made by his or her personal or property guardian.
 - (5) A tort election must be served on the insurer:
 - (a) by personally delivering the tort election at any office of the insurer; or
 - (b) by mailing the tort election by ordinary mail to the head office of the insurer.
 - (6) Notwithstanding any other law, a tort election that is sent by ordinary mail pursuant to clause (5)(b) must be received by the insurer before it is effective.

2002, c.44, s.13; 2013, c.W-17.11, s.190.

c. A-35**AUTOMOBILE ACCIDENT INSURANCE****Change in coverage**

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

- (a) the making of a tort election;
 - (b) the making of a motorcycle election; or
 - (c) the revocation of either a tort election or a motorcycle election.
- (2) Any change in coverage pursuant to this Act must be:
- (a) in writing;
 - (b) in a form provided by the insurer; and
 - (c) accompanied by the prescribed fee.
- (3) A change in coverage is effective as at the date and time it is received by the insurer, and sections 35.12, 40.2 and 40.3 apply, with any necessary modification, to a change in coverage.

2015, c.28, s.13.

DIVISION 3**Tort Actions Available to Part II Beneficiaries****Tort actions available to Part II beneficiary**

41(1) In this section:

- (a) “**economic loss**” means any pecuniary loss respecting, arising out of or stemming from bodily injury caused by a motor vehicle arising out of an accident;
 - (b) “**non-economic loss**” means any non-pecuniary loss respecting, arising out of or stemming from bodily injury caused by a motor vehicle arising out of an accident less any benefits paid or payable pursuant to section 29 for permanent impairment to an insured who is bringing an action pursuant to this Division.
- (2) Subject to subsections (3) and (4), a Part II beneficiary may bring an action in a court for bodily injury arising out of the use or operation of a motor vehicle for economic loss and non-economic loss.
- (3) Subject to subsection (4), no action shall be brought by a Part II beneficiary for bodily injury to any person respecting, arising out of or stemming from bodily injury caused by a motor vehicle arising out of an accident against a Saskatchewan resident who:
- (a) is a Part II.1 beneficiary or a Part VIII beneficiary; and
 - (b) is the owner, operator or passenger of the motor vehicle involved in the accident.

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

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

- (a) economic loss in excess of insurance money paid or to be paid pursuant to section 51.1; and
- (b) non-economic loss, but only if:
 - (i) the loss is caused by the Part II.1 beneficiary or Part VIII beneficiary operating a motor vehicle who is convicted of an offence pursuant to paragraph 253(a) or (b), subsection 254(5) or subsection 255(2) or (3) of the *Criminal Code*; or
 - (ii) the loss is caused by the Part II.1 beneficiary or Part VIII beneficiary operating a motor vehicle who intentionally caused or attempted to cause bodily injury to another person and, as a result of the operation of the motor vehicle, the operator is convicted of an offence pursuant to section 235, 236, 239, 249, 266, 267, 268 or 269 of the *Criminal Code*.

2015, c.28, s.14.

Rules respecting actions available to Part II beneficiary

41.1(1) The following rules apply to an action pursuant to sections 41 and 51.1:

- (a) the rules of negligence and apportionment of liability apply;
 - (b) in determining a person's past and future income loss, the court shall calculate an award based on the person's actual income loss after deducting any applicable taxes pursuant to *The Income Tax Act, 2000* and the *Income Tax Act (Canada)*, any premiums pursuant to the *Employment Insurance Act (Canada)* and any contributions pursuant to the *Canada Pension Plan*;
 - (c) subject to clause (b), in determining a person's past and future income loss, the court shall deduct from any award:
 - (i) all amounts that the person has received or is entitled to receive from any government or agency of government or from any public insurance scheme that lessens the person's loss; and
 - (ii) all Part II benefits paid or payable pursuant to this Act;
 - (d) notwithstanding *The Pre-judgment Interest Act* or any other Act or law, the court shall not award any interest on that part of the judgment that represents a person's non-economic loss.
- (2) The liability of any person for non-economic loss pursuant to this Part is limited to the positive amount L calculated in accordance with the following formula:

$$L = D - \$5,000$$

where D is the amount awarded by the court for non-economic loss.

(3) Notwithstanding any other Act or law, no government, agency of government or public insurance scheme that is required or liable to pay an amount mentioned in subclause (1)(c)(i) has any right of subrogation to recover that amount.

c. A-35

AUTOMOBILE ACCIDENT INSURANCE

- (4) In an action pursuant to this section, on the application of any party, the court may, in accordance with the regulations, direct that any compensation payable respecting all or any claimed categories of damages be provided for in the form of a structured compensation order.
- (5) The court may make a direction pursuant to subsection (4) at any stage in the proceedings.
- (6) In any action pursuant to sections 41 and 51.1, the court shall, when awarding damages, set out under separate headings:
 - (a) the amounts that are to be awarded to any person for economic loss; and
 - (b) the amounts that are to be awarded to any person for non-economic loss.

2015, c.28, s.14.

DIVISION 3.1

Tort Actions Available to Part II.1 Beneficiary**Tort actions for economic loss**

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

- (a) in the case of an insured who is entitled to a benefit pursuant to Division 3 of Part II.1 any past or future income loss in excess of the weekly benefits paid or payable to the insured;
- (b) in the case of an insured who dies as a result of an accident, any past income loss or funeral expenses suffered by the insured’s spouse or dependant in excess of the benefits paid or payable pursuant to Division 4 of Part II.1;
- (c) in the case of an insured who is entitled to any benefit pursuant to Division 2 of Part II.1, any past and future loss suffered by the insured in excess of the benefits to which the insured is entitled; or
- (d) in the case of an insured who is entitled to compensation for loss of earnings pursuant to *The Workers’ Compensation Act, 2013* or any other Act, or any legislation of any other jurisdiction, that relates to the compensation of individuals injured in accidents:
 - (i) any past or future income loss suffered by the insured in excess of the benefits paid or payable pursuant to section 37 of *The Workers’ Compensation Act, 2013*, or similar provisions in any other Act, or any legislation of any other jurisdiction, that relate to the compensation for income loss of individuals injured in accidents;
 - (ii) any past and future loss suffered by the insured’s spouse or dependant in excess of the benefits paid or payable pursuant to sections 80, 81, 83, 85 and 86 of *The Workers’ Compensation Act, 2013*, or similar provisions in any other Act, or any legislation of any other jurisdiction, that relate to the compensation of individuals for the death of an individual in an accident; or

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

(iii) any past and future loss suffered by the insured in excess of the benefits paid or payable pursuant to sections 103, 104, 109 and 111 of *The Workers' Compensation Act, 2013* or similar provisions in any other Act, or any legislation of any other jurisdiction, that relate to the compensation for medical aid of individuals injured in accidents.

(2) Subject to section 43 of *The Workers' Compensation Act, 2013*, an action may be brought by a Part II.1 beneficiary or a Part II.1 beneficiary's spouse or dependant in the Court of Queen's Bench for economic loss, but only if the defendant against whom the action is brought is not being sued in that person's capacity as the owner or operator of a motor vehicle that is insured pursuant to this Act.

(3) Notwithstanding any provision to the contrary, if the death or bodily injury is occasioned in Saskatchewan by an uninsured motor vehicle or a motor vehicle where the names of the operator or owner of the motor vehicle are not known or ascertainable, no Part II.1 beneficiary or a Part II.1 beneficiary's spouse or dependant may:

- (a) bring an action against the insurer as a nominal defendant for economic loss pursuant to section 51 or 51.1; or
 - (b) make an application for payment of a judgment for economic loss against an uninsured motorist pursuant to subsection 55(1), and the insurer shall not be deemed to be the agent of any uninsured motorist for the purposes of an action for economic loss pursuant to this section.
- (4) The following rules apply to an action pursuant to this section:
- (a) the rules of negligence and apportionment of liability apply;
 - (b) in determining economic loss, the court:
 - (i) shall calculate any award based on the insured's past or future income loss after deducting any applicable taxes pursuant to *The Income Tax Act, 2000* and the *Income Tax Act* (Canada), any premiums pursuant to the *Employment Insurance Act* (Canada) and any contributions pursuant to the *Canada Pension Plan*; and
 - (ii) shall not award any amount for income loss for the first seven days after the accident;
 - (c) subject to clause (d), in determining an insured's or insured's spouse's or dependant's economic loss, the court shall deduct from any award all amounts the insured or the insured's spouse or dependant has received or is entitled to receive from any government or agency of government, from any public or private insurance scheme or from any other scheme that lessens the economic loss;
 - (d) in determining economic loss pursuant to clause (1)(b) or subclause (1)(d)(ii), the court shall not deduct from any award any amounts the insured's spouse or dependant has received or is entitled to receive from a contract of life insurance as defined in *The Saskatchewan Insurance Act*.

c. A-35

AUTOMOBILE ACCIDENT INSURANCE

- (5) The deductions mentioned in subclause (4)(b)(i) are to be calculated using the insured's total income at the date of the accident and not the portion of income representing the past or future income loss.
- (6) Notwithstanding any other Act or law, no government, agency of any government, public or private insurer or other person that is required or liable to pay an amount mentioned in clause (4)(c) has any right of subrogation to recover that amount.
- (7) In an action pursuant to this section, on the application of any party, the court may, in accordance with the regulations, direct that any compensation payable respecting all or any claimed categories of damages be provided for in the form of a structured compensation order.
- (8) The court may make a direction pursuant to subsection (7) at any stage in the proceedings.

2015, c.28, s.14.

Tort action for non-economic loss**41.13(1)** In this section:

- (a) **“insured”** means a prescribed person or member of a prescribed class of persons;
 - (b) **“non-economic loss”** means any non-pecuniary loss respecting, arising out of or stemming from bodily injury caused by a motor vehicle arising out of an accident less any benefits paid or payable pursuant to Part II.1 for permanent impairment to an insured who is bringing an action pursuant to this section.
- (2) Subject to subsections (3) and (4) and the regulations and section 43 of *The Workers' Compensation Act, 2013*, an insured who is entitled to a benefit pursuant to this Part may bring an action for damages in the Court of Queen's Bench to recover a non-economic loss:
- (a) against the operator of a motor vehicle if:
 - (i) the loss is caused by a motor vehicle and, as a result of the operation of the motor vehicle, the operator is convicted of an offence pursuant to paragraph 253(a) or (b), subsection 254(5) or subsection 255(2) or (3) of the *Criminal Code*; or
 - (ii) the loss is caused by a motor vehicle and:
 - (A) the operator of the motor vehicle intentionally caused or attempted to cause bodily injury to another person; and
 - (B) as a result of the operation of the motor vehicle, the operator is convicted of an offence pursuant to section 235, 236, 239, 249, 266, 267, 268 or 269 of the *Criminal Code*; or
 - (b) against a third party if the loss is caused by, contributed to, or exacerbated by the acts or omissions of the third party.

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

- (3) For the purposes of clause (2)(b):
- (a) a motor vehicle manufacturer is liable only with respect to its business activities and role in manufacturing motor vehicles;
 - (b) a maker or supplier of motor vehicle parts is liable only with respect to its business activities and role in making or supplying motor vehicle parts;
 - (c) a person engaged in the business of selling motor vehicles is liable only with respect to its business activities;
 - (d) a person engaged in the business of, or whose business includes, a motor vehicle garage, repair shop or service station is liable only with respect to its business activities and role in repairing and servicing motor vehicles; and
 - (e) the holder of a restaurant permit or tavern permit issued pursuant to *The Alcohol and Gaming Regulation Act, 1997* authorizing the permit holder to deal in beverage alcohol is liable only with respect to its business activities and role in supplying beverage alcohol.
- (4) No action shall be brought against a third party as the owner or operator of a motor vehicle if that motor vehicle is insured pursuant to this Act.
- (5) Notwithstanding any Act or law, an insured is only entitled to bring an action pursuant to subsection (2) to recover that portion of his or her non-economic loss that is caused by or attributable to those operators or third parties identified in subsection (2).
- (6) Notwithstanding *The PreJudgment Interest Act* or any other Act or law, the court shall not award any interest on that part of the judgment that represents a person's non-economic loss.

2015, c.28, s.14.

Subrogation for non-economic loss

- 41.14(1)** If the insurer makes a payment pursuant to section 41.13 with respect to a non-economic loss for damages or bodily injury, the insurer is subrogated to and deemed to be an assignee of the person to whom or on whose behalf or with respect to whom benefits or insurance money is to be paid or provided.
- (2) The insurer may bring an action in its own name for recovery of the benefits or insurance money paid for the damages sustained.
- (3) An action may be brought against any person at fault whether or not that person is a Saskatchewan resident.

2015, c.28, s.14.

c. A-35**AUTOMOBILE ACCIDENT INSURANCE****DIVISION 4****General Matters re Bodily Damage and Property
Damage Liability Insurance****Bodily injury liability and property damage liability insurance**

42(1) An owner's certificate shall further insure the person named therein and every other person who with his consent personally operates the vehicle or any part of the vehicle designated therein, against the liability imposed by law upon the person named therein and the other person for loss or damage arising from the ownership, use or operation of the vehicle within Canada or the United States of America, or upon a vessel travelling between ports thereof and resulting from bodily injury to or the death of any person or damage to property, provided that the insurer shall not be liable under an owner's certificate:

- (a) for any liability imposed by any workers' compensation law upon any person insured by the certificate;
- (b) in the case of accidents that occurred before July 1, 1994, for loss or damage resulting from bodily injury to or the death of any person insured by the certificate;
- (c) to any person, not the owner of the vehicle covered by the certificate, engaged in the business of an automobile garage, repair shop or service station or engaged in business as an automobile dealer, for loss or damage sustained while engaged in the operation or repair of the vehicle in the course of that business;
- (d) for any loss or damage resulting from bodily injury to or the death of any person, in the case of accidents that occurred before May 1, 1981, while the person is being carried in or upon or entering or getting onto or alighting from the vehicle;
- (e) for loss or damage resulting from bodily injury to or the death of any employee of any person insured by the certificate while engaged in the operation or repair of the vehicle;
- (f) for loss of or damage to property carried in or upon the vehicle or to any property owned or rented by, or in the care, custody or control of, any person insured by the certificate;
- (g) for any amount in excess of the limits mentioned in subsection (2) and the expenditures provided for in section 44;
- (h) for loss or damage resulting from bodily injury to or the death of any person or damage to property arising directly or indirectly out of a nuclear energy hazard;
- (h.1) for loss or damage caused by or to a motor vehicle in consequence of the operation of a motor vehicle on a surface other than a highway in a test or exhibition of speed, endurance, skill or power;

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

- (i) for loss of or damage to property arising directly or indirectly from the loading or unloading of goods, merchandise or cargo onto or from the vehicle; or
 - (j) for loss or damage arising directly or indirectly out of attached equipment at a site where the attached equipment is being operated.
- (2) The insurer's liability pursuant to subsection (1) for loss or damage arising out of an accident is the positive amount L, if any, calculated in accordance with the following formula:

$$L = \$200,000 - N$$

where N is the amount the insurer is obligated to pay pursuant to section 51.1.

- (3) Subsection (2) applies:
- (a) whether there is one claim or more than one claim arising from the accident; and
 - (b) whether or not the loss or damage results:
 - (i) from bodily injury to one or more persons or from loss or damage to property; or
 - (ii) from bodily injury to one or more persons and also from loss or damage to property.
- (4) If, in any one accident, loss or damage results from bodily injury and loss or damage to property:
- (a) any claim arising out of bodily injury shall have priority over claims arising out of loss or damage to property to the extent that \$190,000 exceeds the liability of the insured; and
 - (b) any claim arising out of loss or damage to property shall have priority over claims arising out of bodily injury to the extent that \$10,000 exceeds the liability of the insured.
- (5) If in an accident loss or damage results from bodily injury, claims for non-economic loss must be paid in priority over claims for economic loss.
- (6) For the purposes of determining the liability of the insurer pursuant to this Part, a motor vehicle and a trailer or semi-trailer attached to a motor vehicle are deemed to be one motor vehicle.
- (7) For the purposes of this section, **“attached equipment”** means machinery, apparatus or equipment that is mounted on or attached to the motor vehicle and not required for the safe operation of the motor vehicle on the highway, but does not include machinery, apparatus or equipment that is:
- (a) used for snow or ice removal from a highway or for sweeping, cleaning, sanding or grading streets;
 - (b) a side- or rear-mounted, power-operated platform;
 - (c) attached to a motor vehicle used for pleasure purposes;

c. A-35**AUTOMOBILE ACCIDENT INSURANCE**

(d) attached to a motor vehicle used as a wrecker, dump truck, garbage truck or forklift; or

(e) attached to a motor vehicle used as a front-end loader or backhoe.

R.S.S. 1965, c.409, s.39; R.S.S. 1978, c.A-35, s.42; 1980-81, c.34, s.14; 1984-85-86, c.1, s.27 and c.47, s.2; 1994, c.34, s.9; 2000, c.5, s.12; 2002, c.44, s.14; 2004, c.35, s.14.

43 Repealed. 1984-85-86, c.1, s.28.**Additional expenditures**

44(1) Where any part of the loss or damage from which a claim under an owner's certificate arises is otherwise within the limits for which indemnity is provided under section 42, the insurer shall:

(a) upon receipt of notice of loss or damage caused to persons or property, serve any person insured by virtue of the certificate by such investigation thereof, or by such negotiations with the claimant, or by such settlement of any resulting claims, as may be deemed expedient by the insurer;

(b) defend in the name and on behalf of any person insured by the certificate and at the cost of the insurer any civil action that may at any time be brought against such person on account of the loss or damage to persons or property;

(c) pay all costs taxed against any person insured by the certificate in any civil action defended by the insurer, except the costs of any appeal taken by such person without the insurer's consent, and any interest accruing after entry of judgment upon that part of the judgment that is within the limits of the insurer's liability; and

(d) in case of injury to a person, reimburse any person insured by the certificate for outlay for such medical aid as may be immediately necessary at the time of the accident causing the injury.

(2) Where a person insured under a contract of insurance, whether named therein or not, is covered under the contract against his liability for loss or damage arising out of the ownership, use or operation of a vehicle covered under this Part and resulting from bodily injury to or the death of any person or damage to property, the insurer is liable under this section for the additional expenditures provided for by clauses (b) and (c) of subsection (1) only in an amount that bears the same ratio to the total amount of those additional expenditures as the amount of the portion of the loss or damage borne by the insurer under section 42 bears to the total amount of the loss or damage.

R.S.S. 1965, c.409, s.41; R.S.S. 1978, c.A-35, s.44; 2015, c.21, s.5.

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

No set-off

44.1 Notwithstanding anything in *The Small Claims Act, 1997* or any other Act, in any action by a person insured pursuant to this Act against another person insured pursuant to this Act, where the only amount at issue is a deductible pursuant to this Act, there shall be no set-off between the parties, and each party is entitled to recover the amount awarded to him by the court.

1984-85-86, c.1, s.29; 1988-89, c.54, s.2; 1997,
c.S-50.11, s.54.

Application of insurance money

45(1) A person having a claim against an insured for which indemnity is provided by virtue of an owner's certificate under this Part shall, notwithstanding that there is no contractual relationship with respect thereto between that person and the insurer, be entitled, upon recovering a judgment therefor against the insured, to have the insurance money payable under this Part applied in or towards satisfaction of his judgment and of any other judgments or claims against the insured covered by the indemnity and may, on behalf of himself and all persons having such judgments or claims, maintain an action against the insurer to have the insurance money so applied.

(2) No creditor of an insured shall be entitled to share in the insurance money payable under this Part in respect of any claim for which indemnity is not provided under this Part.

(3) No:

(a) assignment, transfer, surrender, cancellation, suspension, waiver or discharge of a certificate or of any provision of this Part or of any interest therein or of any insurance money thereunder made by the insured after the happening of the event giving rise to a claim under the certificate;

(b) act or default of the insured before or after such event in violation of this Act; and

(c) violation of the *Criminal Code*, as amended from time to time or of any law or statute of any province, state or country by the owner or driver of the vehicle designated in the certificate;

shall prejudice the right of a person entitled under subsection (1) to have the insurance money applied upon his judgment or claim, or be available to the insurer as a defence to such action.

(4) Where the liability of the insurer under this Part is affected by subsection (1) of condition 7 of the statutory conditions set forth in section 48 or where there is in effect a policy of automobile insurance of the kind or class mentioned in subsection (2) of the said condition 7 without there having occurred on the part of the insured any violation of any term or condition of the policy sufficient in the particular instance to relieve the insurer issuing the policy from liability to indemnify the insured thereunder, nothing in this section prevents the insurer under this Act from availing itself, against the person making claim pursuant to this section, of any defence that the insurer is entitled to set up against the insured.

c. A-35**AUTOMOBILE ACCIDENT INSURANCE**

(5) An insured shall be liable to pay or reimburse the insurer upon demand, any amount that the insurer has paid by reason of this section that it would not otherwise be liable to pay.

(6) Where the insurer denies liability to an insured under this Part, it shall have the right, upon application to the court in which the action is taken, or a judge thereof, to be made a third party in any action to which the insured is a party and in which a claim is made against the insured by any party to the action for which it is or might be asserted that indemnity is provided under this Part, whether or not the insured enters an appearance or defence in the action and, upon being made a third party, the insurer shall have the right to contest the liability of the insured to any party claiming against the insured, and to contest the amount of any claim made against the insured, to the same extent as if a defendant in the action, including for that purpose the right to deliver a statement of defence to the claim of any party claiming against the insured, to deliver other pleadings, to have production and discovery from any party adverse in interest and the right to examine and cross-examine witnesses at the trial.

(6.1) Where, pursuant to subsection (6):

- (a) the insurer has been made a third party; and
- (b) the insured has not filed a defence;

the insurer may at any stage of the proceedings settle the action and consent to judgment against the insured as if the insurer were the defendant in the action.

(7) Where the insurer is liable, or where it is of the opinion that it would be liable if an action were taken against it, to pay insurance money with respect to a claim under this Part but would not be so liable except for subsection (3) the insurer may, upon denying liability to the insured, notify the insured of the claim in writing sent by registered mail and addressed to him at the address of the insured last known to the insurer and if the insured does not, within thirty days after the date on which the notice is mailed, dispute his liability for the loss, damage or injury in respect of which the claim is made, the insurer may settle the claim and, subject to subsection (8), the insured is liable to pay or reimburse the insurer upon demand the amount of the settlement.

(8) Where an insured agrees that the insurer would not, except for this section, be or become liable to make a payment in respect of a claim against the insured, the insured may, either before or after the making of such payment by the insurer, undertake to pay or reimburse the amount of the payment to the insurer by giving an undertaking as provided in clause (b) of subsection (3) of section 54 in which event the undertaking shall have the same force and effect as an undertaking given under that clause.

(9) Subject to subsection (8), the insurer may, on the payment of a sum under this section that it would not otherwise be liable to pay, require an assignment of the judgment from the judgment creditor to the extent of that payment and, unless within thirty days after demand for payment or reimbursement under subsection (5) has been made by the insurer the insured disputes in writing delivered to the head office of the insurer at the city of Regina his liability to pay or reimburse the insurer, section 57 applies *mutatis mutandis*.

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

(10) Where the insurer obtains judgment against an insured for the amount that the insured is liable to pay or reimburse the insurer under subsection (5) the judgment shall, for the purposes of Part XII of *The Traffic Safety Act* be treated as if it were in all respects a judgment for damages on account of the death of or injury to a person or on account of damage to property.

R.S.S. 1965, c.409, s.42; 1973, c.8, s.17; 1973-74, c.4, s.6; R.S.S. 1978, c.A-35, s.46; 1980-81, c.83, s.3; 1983, c.82, s.2; 1984-85-86, c.1, s.30; 1986, c.33, s.2; 2004, c.T-18.1, s.299.

Insured to give notice of action

46 Every insured against whom an action is commenced for damages occasioned by a vehicle designated in an owner's certificate shall give notice thereof in writing to the insurer within five days after service of notice or process in the action.

R.S.S. 1965, c.409, s.43; R.S.S. 1978, c.A-35, s.46.

Unnamed insured may recover indemnity

47 A person insured by but not named in an owner's certificate may recover indemnity in the same manner and to the same extent as if named therein as the insured, and for that purpose may, in his own name and on his own behalf, exercise the same rights and shall be subject to the same obligations as if named therein as the insured.

R.S.S. 1965, c.409, s.44; R.S.S. 1978, c.A-35, s.47.

STATUTORY CONDITIONS

Statutory conditions

48 Bodily injury liability and property damage liability insurance provided by an owner's certificate under this Part shall be subject to the following conditions which shall be statutory conditions:

Insured to give notice of other insurance

1 Upon the happening of any event for which insurance is provided by an owner's certificate under this Part, the person insured by virtue of the owner's certificate shall promptly notify the insurer of any other insurance of the same interest, whether valid or not, insuring against all or any part of his liability for which insurance is provided by the owner's certificate.

Intentional Acts

1.1 A person insured by the owner's certificate shall not wilfully cause or attempt to cause damage through the operation of a motor vehicle.

Qualified or authorized

1.2 For the purposes of statutory condition 2, a driver is deemed not to be qualified or authorized if:

- (a) his or her ability to apply for or hold a driver's licence has been cancelled, suspended or revoked by the courts pursuant to the *Criminal Code* or the administrator pursuant to *The Vehicle Administration Act*;
- (b) the driver has been disqualified from driving a motor vehicle pursuant to *The Vehicle Administration Act*; or
- (c) the driver has not renewed his or her driver's licence and he or she owes money to the insurer pursuant to subsection 6(6) or section 8 or 80.2 of the Act.

c. A-35**AUTOMOBILE ACCIDENT INSURANCE****Prohibited use of vehicle**

2(1) The person insured by the owner's certificate shall not drive or operate the vehicle designated therein:

- (a) while under the influence of intoxicating liquor or drugs to such an extent as to be for the time being incapable of the proper control of the vehicle;
- (b) while he or she is not for the time being qualified or authorized by law to drive or operate a motor vehicle;
- (c) in any race or speed test; or
- (d) with the intent to evade a police officer.

(2) The person insured by the owner's certificate shall not permit, suffer, allow or connive at the use of the vehicle designated therein:

- (a) by a person under the influence of intoxicating liquor or drugs to such an extent as to be for the time being incapable of the proper control of the vehicle; or
- (b) by a person who is not for the time being qualified or authorized by law to drive or operate a motor vehicle;
- (c) in a race or speed test; or
- (d) by a person with the intent to evade a police officer.

Certain other uses prohibited

3(1) The vehicle designated in an owner's certificate shall not be operated in violation of the conditions, limitations, restrictions or prohibitions of any law, the regulations made pursuant to any law, the certificate of registration or a permit concerning:

- (a) the combined weight of the vehicle and its load;
- (b) the purpose for which the vehicle may be used;
- (c) the time during which the vehicle may be operated;
- (d) the territory in which the vehicle may be operated;
- (e) the number of passengers that may be carried on the vehicle; or
- (f) the number or quantity of goods that may be carried on the vehicle.

(2) The vehicle designated in an owner's certificate shall not be rented or leased under the arrangement commonly referred to as "U-Drive" or "Auto-Lease" unless the intention to rent or lease the vehicle has been disclosed in the application for the owner's certificate.

Loss or damage to persons or property

4(1) Where indemnity is, or might be asserted to be, provided under this Part, the person insured by the owner's certificate shall:

- (a) promptly give to the insurer written notice, with all available particulars, of any accident involving loss or damage to persons or property, and of any claim made on account of accident;
- (b) verify by affidavit or statutory declaration, if required by the insurer, that the claim arises out of the operation or use of a vehicle designated in the owner's certificate and that the person operating or responsible for the operation of the vehicle at the time of the accident is a person insured by the certificate; and
- (c) forward immediately to the insurer every writ, letter, document or advice received by him from or on behalf of the claimant.

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

(2) The person insured by the owner's certificate shall not voluntarily assume any liability or settle any claim except at his own cost, and the person so insured shall not interfere in any negotiations for settlement or in any legal proceedings, but, whenever requested by the insurer, shall aid in securing information and evidence, and the attendance of any witness, and shall co-operate with the insurer except in a pecuniary way, in the defence of any action or proceeding or in the prosecution of any appeal.

Waiver

5 Neither the insurer nor the person insured by the owner's certificate shall be deemed to have waived any term or condition of this Part by any act relating to the appraisal or to the delivery and completion of proofs of loss pursuant to any provision of this Act, or to the investigation or adjustment of a claim.

Inspection of motor vehicles

6(1) The insurer shall be permitted, at any reasonable time, to inspect any motor vehicle designated in an owner's certificate and its equipment.

(2) If a motor vehicle has an onboard computer or sensing diagnostic module installed in the motor vehicle, the insurer is entitled to examine the contents of the onboard computer or sensing diagnostic module and make a copy of any information contained on the onboard computer or sensing diagnostic module.

(3) The insurer may use any information collected pursuant to this section to determine a claimant's entitlement to benefits pursuant to this Part.

Other insurance

7(1) Subject to subsection (2), where a contract of insurance or other instrument purports to insure a person, whether named in the contract or other instrument or not, against his liability for loss or damage resulting from bodily injury to or the death of any person or damage to property, and that person is insured under this Part, whether named in an owner's certificate or not, the insurer under this Act shall be liable with respect to any loss or damage for which indemnity is provided by this Part only as hereinafter provided, that is to say:

1 the liability for the loss or damage of the insurer entering into the contract of insurance or issuing the other instrument, in this statutory condition referred to as the "**other insurer**", shall be ascertained separately as if this Part had not been enacted;

2 unless the loss or damage exceeds the amount of the liability of the other insurer therefor, as ascertained pursuant to paragraph 1, the insurer under this Act shall not be liable under this Part with respect to the loss or damage;

3 if the loss or damage exceeds the amount of the liability of the other insurer therefor, as ascertained pursuant to paragraph 1, the liability under this Part of the insurer under this Act shall be limited to the amount of the excess not exceeding the limit mentioned in subsection (2) of section 42.

(2) Where the Superintendent of Insurance in the exercise of any general or special power conferred upon him by *The Saskatchewan Insurance Act* approves a form of policy of automobile insurance that purports to limit the liability of the insurer thereunder to an amount in excess of the amount payable under this Part by the insurer under this Act or that contains words to a like effect, nothing in subsection (1) affects the validity of that policy, and where such a policy is in effect the liability of the insurer under this Act shall, subject to subsection (4) of section 45, be ascertained as if no other insurance were in effect.

Time and manner of payment of insurance money

8(1) The insurer shall pay the insurance money for which it is liable under this Part within sixty days after the proof of loss has been received by it.

(2) The person insured by the owner's certificate may not bring an action to recover the amount of a claim under the certificate unless the requirements of statutory condition 4 are complied with and the amount of the loss has been ascertained by a judgment against the insured after trial of the issue, or by agreement between the parties with the written consent of the insurer.

(3) **Repealed.** 2004, c.L-16.1, s.34.

c. A-35**AUTOMOBILE ACCIDENT INSURANCE****Who may give notice and proofs of claim**

9 Notice of claim may be given and proofs of claim may be made by the agent of the insured named in the owner's certificate in case of absence or inability of the insured to give the notice or make the proof, the absence or inability being satisfactorily accounted for, or in the like case, of if the insured refuses to do so, by a person to whom any part of the insurance money is payable.

R.S.S. 1965, c.409, s.45; 1973, c.8, s.18; 1973-74, c.4, s.7; R.S.S. 1978, c.A-35, s.48; 1983, c.82, s.2; 1984-85-86, c.1, s.31; 1994, c.34, s.10; 2000, c.5, s.13; 2002, c.44, s.15; 2004, c.35, s.15; 2004, c.L-16.1, s.34.

Operator further insured

49 An operator's certificate shall further insure the person named therein against the liability imposed by law upon him for loss or damage arising from the personal driving by him, within Canada or the United States of America, or upon a vessel plying between ports thereof, of a motor vehicle of which he is not the owner and that is not designated in an unexpired owner's certificate but that he is driving with the owner's consent and that he believes on reasonable grounds is designated in an unexpired owner's certificate, to the same extent as if the motor vehicle were designated in an unexpired owner's certificate, and this Part applies *mutatis mutandis* as if the person named in the operator's certificate were named in an unexpired owner's certificate in which such motor vehicle is designated.

R.S.S. 1965, c.409, s.46; R.S.S. 1978, c.A-35, s.50; 1980-81, c.34, s.15.

Insurance proof of financial responsibility

50(1) For the purpose of availing to persons insured pursuant to this Part financial responsibility of the kind and in the form required under the applicable laws of any other province, state or territory, the insurer may execute and file with the appropriate public authorities in that other province, state or territory all or any of the following:

- (a) a power of attorney authorizing acceptance of service of notice or process for itself or for its insured in any action or proceeding arising out of a motor vehicle accident in that other province, state or territory;
 - (b) an undertaking to appear in any action or proceeding mentioned in clause (a);
 - (c) an agreement to submit to the jurisdiction of the courts in the other province, state or territory and not to set up any defence in any action or proceeding mentioned in clause (a) that would not be available to an insurer under a motor vehicle liability policy issued in that province, state or territory.
- (2)** The insurer may do any act or thing that, in the opinion of the insurer, is necessary or incidental to give effect to a power of attorney, undertaking or agreement mentioned in subsection (1).

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

(3) On demand of the insurer, an insured is liable to pay to or to reimburse the insurer any amount that the insurer has paid by reason of this section that the insurer would not otherwise be liable to pay.

(4) In an action in another province, state or territory against the insurer, or against a person insured pursuant to section 42, arising out of a motor vehicle accident in that province, state or territory, the insurer shall appear and shall not, with respect to bodily injury liability insurance and property damage liability insurance or coverage pursuant to a plan of automobile insurance, set up a defence to a claim under an owner's certificate, including a defence as to the limit or limits of liability or the limits of amounts payable pursuant to a plan of automobile insurance, that might not be set up if the claim were under a contract evidenced by a motor vehicle liability policy or a contract containing a plan of automobile insurance issued in that province, state or territory.

(5) Notwithstanding section 40, this section applies to insurance pursuant to Part II and this Part and to benefits pursuant to Part VIII.

1994, c.34, s.11.

Remedy for injuries, etc., in hit-and-run accident

51(1) Where bodily injury to or the death of a person or property damage in excess of the amount specified for the purpose in the regulations arises out of the use or operation within Saskatchewan of a motor vehicle and:

- (a) the names of both the owner and the operator of the motor vehicle are not known or ascertainable; or
- (b) the name of the operator is not known or ascertainable and the owner is not liable to an action for damages for the injury, death or property damage;

any person who has a cause of action:

- (c) in the case mentioned in clause (a), against the owner or the operator;
- (d) in the case mentioned in clause (b), against the operator;

in respect of the bodily injury, death or property damage may bring an action against the insurer as nominal defendant, either alone or as a defendant with others alleged to be responsible for the injury, death or property damage.

(2) No proceedings shall be brought against the insurer as nominal defendant under this section unless notice of all relevant facts is given in writing to the insurer as soon as it is reasonably practicable and in any event within twenty-eight days after the accident that occasioned the bodily injury, death or property damage.

(3) An action under this section against the insurer as nominal defendant may be commenced only within the time limited by section 257 of *The Traffic Safety Act* for bringing an action against the owner or operator of the vehicle.

c. A-35**AUTOMOBILE ACCIDENT INSURANCE**

(4) Where, after an action has been commenced in respect of bodily injury to or the death of a person or property damage in excess of the amount specified for the purpose in the regulations arising out of the use or operation in Saskatchewan of a motor vehicle, it is alleged that the injury, death or property damage was caused or contributed to by another motor vehicle, but:

- (a) the names of both the owner and the operator of the motor vehicle are not known or ascertainable; or
- (b) the name of the operator is not known or ascertainable and the owner is not liable to an action for damages for the injury, death or property damage;

the insurer may be added as a nominal defendant on the application of any party and shall be added as a nominal defendant on its own application.

(5) In an action against the insurer as nominal defendant, the insurer may deny generally the allegations in respect of the unidentified motor vehicle and the owner and operator thereof and shall not be required to set forth the facts upon which it relies.

(6) In an action against the insurer as nominal defendant, a judgment against the insurer shall not be granted unless the court is satisfied that all reasonable efforts have been made by the parties to ascertain the identity of the unknown owner and operator or unknown operator, as the case may be, and that the identity of those persons or that person is not ascertainable.

(7) Where, before judgment is granted in an action against the insurer as nominal defendant, the identity of the unknown owner or operator is ascertained, then, notwithstanding section 257 of *The Traffic Safety Act* or section 33 of *The Snowmobile Act* but subject to section 41, that owner or operator shall be added as a defendant in the action in substitution for the insurer, subject to such conditions as the court may prescribe.

(8) The insurer may if it thinks fit compromise and settle the claim or claims of any person entitled to commence an action under this section.

(9) Upon the rendering of a judgment against the insurer as nominal defendant under this section and upon the expiration of the time limited for appeal therefrom or upon the compromise and settlement of any claim under this section, the insurer shall pay in or towards satisfaction of the judgment or claim an amount equal to that which in like circumstances the insurer is authorized to pay under section 42 in a case where:

- (a) the names of both the owner and operator of the motor vehicle causing bodily injury, death or property damage are known;
- (b) the operator of the motor vehicle was a person who at the material time was:
 - (i) qualified and authorized by law to use or operate the vehicle; and
 - (ii) personally operating the vehicle with the consent of the owner thereof; and
- (c) the vehicle was at the time of the accident causing the bodily injury, death or property damage designated in an unexpired owner's certificate;

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

and, subject to section 42, if the damage to property caused by the motor vehicle is in excess of the amount specified for the purpose in the regulations, the amount payable by the insurer under this section is the amount by which the damage exceeds the amount prescribed in the regulations.

(10) Where under this section, a judgment has been obtained against the insurer as nominal defendant or the insurer has settled any claim, the insurer may apply:

- (a) to a judge of the court where the judgment has been obtained; or
- (b) in the case where a claim has been settled, to a judge of the court that would have had jurisdiction to entertain an action for the recovery of damages to the amount of the settlement;

for an order certifying that any person was at the time of the accident the owner or operator of the motor vehicle that caused the bodily injury, death or property damage in respect of which the judgment was obtained or the settlement made.

(11) If the judge hearing an application under subsection (10) is satisfied on the evidence that the person named in the application was, at the time of the accident that caused the bodily injury, death or property damage giving rise to the action in which the judgment was recovered or to the claim that has been settled, the owner or operator, or both, of the motor vehicle involved in that accident, the judge may make the order applied for unless he is satisfied that the person would not have been liable for any damages if he had appeared and defended the action that was brought or, in the case of a claim settled before action, any action that might have been brought to enforce the claim, or he may direct the trial of an issue.

(12) Upon the making of an order under subsection (11) or upon the judgment of the trial of an issue directed under that subsection, the person certified therein to be the owner or operator or owner and operator of the motor vehicle causing the bodily injury, death or property damage, whether or not the operator of the motor vehicle is named in an unexpired operator's certificate and whether or not the motor vehicle is designated in an unexpired owner's certificate, shall be liable to pay to the insurer as a debt due and owing to the insurer the amount of all sums paid by the insurer pursuant to any judgment or settlement under this section and the order or judgment shall be treated, for the purpose of Part XII of *The Traffic Safety Act*, as if it were in all respects a judgment for damages on account of the death of or injury to a person or on account of damage to property.

1972, c.10, s.10; 1973, c.8, s.19; R.S.S. 1978, c.A-35, s.51; 1980-81, c.34, s.16; 1983, c.82, s.2; 1984-85-86, c.1, s.32; 1986, c.33, s.2; 2002, c.44, s.16; 2004, c.L-16.1, s.34; 2004, c.T-18.1, s.299.

Remedy against insurer where action against person prohibited

51.1(1) A Part II beneficiary may bring an action against the insurer as a nominal defendant either alone or with other defendants alleged to be responsible for the bodily injury if the Part II beneficiary:

- (a) has a cause of action against a Part II.1 beneficiary or Part VIII beneficiary arising out of or stemming from bodily injury caused by a motor vehicle arising out of an accident; and
- (b) is unable to bring an action against the other person mentioned in clause (a) as a result of subsections 41(3) and (4).

c. A-35

AUTOMOBILE ACCIDENT INSURANCE

- (2) An action pursuant to this section against the insurer as nominal defendant must be commenced within the time limited by section 257 of *The Traffic Safety Act* for bringing an action against an owner or operator of the motor vehicle.
- (3) On notification of a claim pursuant to this section, the insurer shall notify all persons on whose behalf the insurer acts as nominal defendant regarding the claim.
- (4) If an action is brought against the insurer as nominal defendant, the insurer has the right to:
- (a) defend the action in the manner the insurer determines is appropriate; or
 - (b) settle any claim or claims of any person entitled to commence an action pursuant to this section.
- (5) Subject to section 59, for the purposes of clause (4)(b), the insurer may make any payment that it considers proper in the circumstances.
- (6) No person on whose behalf the insurer acts as nominal defendant shall interfere in any negotiations for settlement or in any legal proceeding but, whenever requested by the insurer, that person shall:
- (a) aid in securing information and evidence and the attendance of any witness; and
 - (b) co-operate with the insurer in any action or proceeding or in the prosecution of any appeal pursuant to this section.
- (7) Notwithstanding any other provision of this Act, if a person on whose behalf the insurer acts as nominal defendant fails to co-operate with the insurer as required by subsection (6), the insurer may:
- (a) terminate that person's benefits pursuant to Part II, II.1 or VIII, as the case may be; and
 - (b) declare that the person is no longer covered pursuant to Parts III and IV.
- (8) **Repealed.** 2015, c.28, s.15.

2002, c.44, s.17; 2004, c.T-18.1, s.299; 2015, c.28, s.15.

Uninsured motor vehicles

52(1) In this section and sections 53 to 59, “**uninsured motor vehicle**” means a motor vehicle with respect to which no amount is payable for bodily injury to persons, or for the loss or damage to property of any person, caused by the use or operation of a motor vehicle in Saskatchewan because of the non-existence of:

- (a) an unexpired owner's certificate;
- (b) a motor vehicle liability policy within the meaning of *The Saskatchewan Insurance Act* respecting the motor vehicle; or

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

- (c) any insurance policy within the meaning of *The Saskatchewan Insurance Act* respecting the motor vehicle that insures or purports to insure at least to the limits mentioned in section 204 of that Act any of the persons that in the circumstances are legally responsible for the bodily injury to any person or for the loss or damage to property.
- (2) Notwithstanding subsection (1), an uninsured motor vehicle does not include:
 - (a) a motor vehicle with respect to which there exists proof of financial responsibility given in the manner provided for in clause 126(1)(b) or (c) of *The Traffic Safety Act*;
 - (b) a motor vehicle owned by the Crown in right of Canada; or
 - (c) a motor vehicle that is exempt from the obligation to:
 - (i) obtain a certificate of registration pursuant to *The Highway Traffic Act*; or
 - (ii) insure pursuant to this Act.

2002, c.44, s.18; 2004, c.T-18.1, s.299; 2004, c.35, s.16.

Insurer agent of owner of uninsured motor vehicle for service of process

53 The insurer is deemed to be an agent of the owner of every uninsured motor vehicle for service of notice or process in an action in Saskatchewan arising out of the use or operation in Saskatchewan of the uninsured motor vehicle, and, where such an action is commenced:

- (a) a notice or process shall be served on the insurer by leaving a copy thereof with or at the office of the insurer in the city of Regina; and
- (b) a copy of the notice or process shall be sent forthwith by registered mail to the defendant at his latest address as shown in the records of the insurer.

R.S.S. 1965, c.409, s.50; R.S.S. 1978, c.A-35, s.53.

Application for payment by insurer where person has cause of action

54(1) Where the death of or bodily injury to or loss of or damage to property of a person is occasioned in Saskatchewan by an uninsured motor vehicle, any person who would have cause of action against the owner or driver of the uninsured motor vehicle in respect of the death, bodily injury, loss of or damage to property, except a person entitled to make an application under subsection (1) of section 55, may make application, in a form prescribed by the insurer, for payment by the insurer under this Act of the damages in respect of the death, bodily injury, loss of or damage to property.

(1.1) Notwithstanding subsection (1), an action respecting, arising out of or stemming from bodily injury or property damage caused by a motor vehicle arising out of an accident must be brought pursuant to section 51.1 if the owner or operator of an uninsured motor vehicle is a Part VIII beneficiary.

c. A-35**AUTOMOBILE ACCIDENT INSURANCE**

(2) Upon receipt of an application under subsection (1) the insurer shall, by registered mail, forward a notice of the application for payment by the insurer under this Act to the owner and the driver of the uninsured motor vehicle against whom liability for the damages occasioned by the operation of the uninsured motor vehicle is alleged, addressed to them at their latest addresses as shown in the records of the insurer.

(3) The insurer may, in respect of an application made under subsection (1), make payment, subject to section 59, of an amount that it considers proper in all the circumstances if:

(a) the applicant executes a release under seal of all claims arising out of the motor vehicle accident that occasioned the damages to be paid by the insurer; and

(b) subject to clause (c), the owner and driver of the uninsured motor vehicle execute a consent to the payment by the insurer of the sum on account of damages and also execute under seal an undertaking to repay to the insurer the amount to be paid by the insurer; or

(c) the person to whom a notice is sent in accordance with subsection (2) does not reply within thirty days after the date on which the notice was sent either:

(i) by mail; or

(ii) by attending in person at the place named in the notice;

and disputes his liability to the person making application under subsection (1).

(4) Where an amount is paid by the insurer under subsection (3), the insurer is subrogated to the rights of the person to whom that amount is paid and the insurer may maintain an action in its name or in the name of that person against any other person or persons responsible for the use or operation of the uninsured motor vehicle.

(5) If payment is made pursuant to either subsection (3) or section 51.1 as a result of the application of this section, the administrator may at any time suspend the privilege of the person to whom the notice was sent pursuant to subsection (2) of driving a motor vehicle in Saskatchewan and also his privilege of using or having a motor vehicle on a public highway in Saskatchewan, and no licence to drive a motor vehicle and no permit or certificate of registration in respect of a motor vehicle shall at any time thereafter be granted or issued to or in respect of that person under *The Traffic Safety Act*, and no such licence, permit or certificate shall be renewed, until proof of financial responsibility in a form and to the amount prescribed by Part XII of *The Traffic Safety Act*, has been furnished and repayment of the amount paid by the insurer has commenced on the undertaking mentioned in clause (b) of subsection (3).

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

(6) Where a person who has commenced repayment of the amount paid by the insurer on the undertaking mentioned in clause (b) of subsection (3) is in default in any payment for a period of ten days, the administrator shall forthwith suspend the privilege of that person of driving a motor vehicle in Saskatchewan and the privilege of having and using a motor vehicle on a public highway in Saskatchewan and also any licence to drive a motor vehicle and any permit or certificate of the registration in respect of a motor vehicle granted or issued to or in respect of that person under *The Traffic Safety Act*.

R.S.S. 1965, c.409, s.51; 1973, c.8, s.21; R.S.S. 1978, c.A-35, s.55; 1983, c.82, s.2; 1986, c.33, s.2; 2000, c.5, s.14; 2002, c.44, s.19; 2004, c.T-18.1, s.297 and 299; 2015, c.28, s.16.

Application for payment of judgment

55(1) Subject to section 56, where a person recovers in a court in Saskatchewan a judgment for damages on account of injury to or the death of any person or loss of or damage to property occasioned in Saskatchewan by an uninsured motor vehicle owned or operated by the judgment debtor within Saskatchewan, upon the determination of all proceedings, including appeals, he may make application, in the form prescribed by the insurer, for payment of the amount of the judgment or of the unsatisfied portion thereof, and the insurer shall pay that amount or portion.

(2) Where an application is made to the insurer under subsection (1), the insurer may at any time within thirty days after the receipt of the application, or within such further time as may be allowed upon application to a judge of the Court of Queen's Bench, give written notice to the applicant of any objection to payment of the judgment or part of the judgment, and, where the insurer gives such notice, the applicant may apply by notice of motion to a judge of the Court of Queen's Bench for a finding or determination in respect of any matter in connection with the application for payment by the insurer.

(3) The insurer shall not pay any amount in respect of a judgment unless the judgment was given in an action brought against all persons against whom the applicant might reasonably be considered as having a cause of action in respect of the damages in question and prosecuted against every such person to judgment or dismissal.

R.S.S. 1965, c.409, s.52; R.S.S. 1978, c.A-35, s.55; 1984-85-86, c.1, s.33.

Non-application of section 55

56(1) Section 55 does not apply in the case of a judgment that has been signed in an action in which:

- (a) **Repealed.** 1984-85-86, c.1, s.34.
- (b) the defendant did not file a statement of defence;

c. A-35**AUTOMOBILE ACCIDENT INSURANCE**

- (c) the defendant did not appear in person or by counsel at the trial; or
- (d) judgment was signed upon the consent or with the agreement of the defendant;

unless the insurer has been given notice of such failure, consent or agreement and has been afforded an opportunity to take such action as it may consider advisable under subsection (2).

(2) Where the insurer receives notice under subsection (1), it may, if it considers it advisable, within thirty days, file a defence, make payment into court, appear by counsel at the trial or take such other action as it may consider appropriate on behalf of and in the name of the defendant, and may thereupon, on behalf of and in the name of the defendant, conduct his defence, and may, where it considers it advisable to do so, consent to judgment in such amount as it may consider proper in all the circumstances, and all acts done in accordance therewith shall be deemed to be the acts of the defendant.

(2.1) Where pursuant to subsection (2) the insurer defends on behalf of and in the name of the defendant, the insurer is not required to produce the defendant for discovery by any other party to the action.

(3) Where the pleadings have been closed or under the rules of court are deemed to have been closed, the insurer may, upon giving notice to the local registrar of the Court of Queen's Bench acting at the judicial centre at which the action is pending that it intends to defend the action on behalf of and in the name of the defendant, reopen the pleadings.

R.S.S. 1965, c.409, s.53; R.S.S. 1978, c.A-35, s.56; 1979-80, c.92, s.9; 1984-85-86, c.1, s.34.

Assignment of judgment

57(1) The insurer shall not make any payment under section 55 until the judgment creditor assigns the judgment to the insurer.

(2) Upon lodging the assignment of judgment or a notarial copy thereof with the local registrar of the Court of Queen's Bench at the judicial centre at which the judgment was obtained, the insurer shall, to the extent of the amount of the assignment, be deemed to be the judgment creditor.

(3) Where execution is issued in the name of the judgment creditor and the assignment of judgment or a notarial copy thereof is lodged with the sheriff having the writ of execution, subsection (2) shall apply *mutatis mutandis*.

R.S.S. 1965, c.409, s.54; R.S.S. 1978, c.A-35, s.57; 1979-80, c.92, s.9.

Restriction on payments under section 51, 54 or 55

58(1) No payment shall be made under section 51, 51.1, 54 or 55, to the extent of any amount that is paid or payable, in respect of death, bodily injury, loss of or damage to property or in respect of the liability therefor of the owner or driver of the uninsured motor vehicle or the employer of either of them, by some other insurer by reason of the existence of a policy of insurance within the meaning of *The Saskatchewan Insurance Act*, other than a policy of life insurance.

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

(2) No amount shall be sought under section 51, 51.1, 54 or 55, and no amount so sought shall be paid, in lieu of the making of a claim or the receiving of a payment that is payable by reason of the existence of a policy of insurance within the meaning of *The Saskatchewan Insurance Act*, other than a policy of life insurance.

(3) No amount shall be sought under section 51, 51.1, 54 or 55, and no amount so sought shall be paid, to reimburse or otherwise indemnify an insurer in respect of the amount paid or payable by that insurer by reason of the existence of a policy of insurance within the meaning of *The Saskatchewan Insurance Act*, other than a policy of life insurance.

(3.1) The insurer's liability pursuant to section 51, 54 or 55 with respect to loss or damage to property includes only that amount of the loss or damage to the insured's property that is not paid or payable to the insured pursuant to Part III.

(3.2) Subject to subsection (3.3), no amount shall be sought pursuant to section 51, 54 or 55, and no amount sought pursuant to any of those sections is payable, with respect to loss or damage to property owned by one of the following:

- (a) the Government of Canada;
- (b) the Government of Saskatchewan;
- (c) a Crown corporation established by either of the governments mentioned in clauses (a) and (b);
- (d) a municipality;
- (e) any other prescribed corporation.

(3.3) Subsection (3.2) does not apply if the property mentioned in that section is insured pursuant to this Act.

(4) No amount shall be sought under section 51, 51.1, 54 or 55, and no amount so sought shall be paid, in lieu of the making of a claim or the receiving of a payment under *The Workers' Compensation Act, 2013* or under a similar statute or law with respect to injured workers enacted by the Legislature or other competent law-making authority of any province, state or country.

(5) No amount shall be sought under section 51, 51.1, 54 or 55, and no amount so sought shall be paid, to reimburse or otherwise indemnify the Workers' Compensation Board in respect of payments made by it under *The Workers' Compensation Act, 2013*, or to reimburse or otherwise indemnify a similar board or compensating body in respect of payments made by it under a similar statute or law with respect to injured workers enacted by the Legislature or other competent law-making authority of any province, state or country.

(6) No amount shall be sought under section 51, 51.1, 54 or 55, and no amount so sought shall be paid, in respect of hospital services paid for pursuant to an Act enacted by the Legislature or other competent law-making authority of any province, state or country.

R.S.S. 1965, c.409, s.55; 1968, c.7, s.7; R.S.S. 1978, c.A-35, s.58; 1980-81, c.83, s.3; 1997, c.12, s.7; 2002, c.44, s.20; 2004, c.35, s.17; 2013, c.W-17.11, s.189 and 190.

c. A-35

AUTOMOBILE ACCIDENT INSURANCE

Same

59(1) The insurer shall not make any payment under section 51.1, 54 or 55 that under clauses (a), (b), (c), (d), (e), (f), (h), (i) and (j) of subsection (1) of section 42 it would not be liable to make if the motor vehicle occasioning the death or bodily injury or the loss of or damage to property were designated in an owner's certificate.

(2) The insurer is not liable to pay pursuant to section 51.1, 54 or 55 more than the total amount of \$200,000, exclusive of costs, for all loss or damage on account of bodily injury to one or more persons or on account of the loss or damage to property arising out of any one accident.

(2.1) If in any one accident damages result from bodily injury and loss of or damage to property, the claims arising out of the loss or damage to property have priority over the claims arising out of the bodily injury to the extent of \$10,000.

(2.2) If in an accident loss or damage results from bodily injury, claims for non-economic loss must be paid in priority over claims for economic loss.

(3) The amount that the insurer is otherwise authorized to pay under sections 51.1, 54 and 55 in any case shall be reduced:

(a) by such sum as the applicant has recovered or is likely to recover from the judgment debtor;

(b) **Repealed.** 2002, c.44, s.21.

(c) by the sum that has been paid or is payable to or on behalf of or in respect of the applicant under *The Saskatchewan Medical Care Insurance Act* or under a similar statute or law in respect of medical services enacted by the Legislature or other competent law-making authority of any province, state or country;

(d) by the sum that has been paid or is likely to be paid in respect of the bodily injuries pursuant to an Act with respect to hospital services enacted by the Legislature or other competent law-making authority of any province, state or country; and

(e) by the sum that has been paid or is likely to be paid to or on behalf of the applicant under *The Workers' Compensation Act, 2013* or under a similar statute or law with respect to injured workers enacted by the Legislature or other competent law-making authority of any province, state or country.

(4) Any amount paid by the insurer in excess of the amount authorized by this section may be recovered by action brought by the insurer.

(5) The insurer may pay the costs awarded in an action against the owner or driver of an uninsured motor vehicle but not more than the actual disbursements and fees as awarded in the judgment as between the parties to the action.

R.S.S. 1965, c.409, s.56; R.S.S. 1978, c.A-35, s.59; 1980-81, c.34, s.18 and c.83, s.3; 1984-85-86, c.1, s.35; 1997, c.12, s.7; 2002, c.44, s.21; 2013, c.W-17.11, s.189.

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

Payments to non-residents

60(1) For the purpose of this section the residence of a person shall be determined as of the date of the motor vehicle accident as a result of which the damages are claimed.

(2) The insurer shall not pay any amount under section 51, 54 or 55 to or on behalf of a person who ordinarily resides outside Saskatchewan unless he resides in a jurisdiction in which recourse of a character substantially similar to that provided by those sections is afforded to residents of Saskatchewan, and in no event shall a payment under any of those sections include an amount that would not be payable by the law of the jurisdiction in which such person resides.

R.S.S. 1965, c.409, s.57; R.S.S. 1978, c.A-35, s.60.

PART V
Jurisdiction of Court

Interpretation

61 In this Part, “**court**” means Her Majesty’s Court of Queen’s Bench for Saskatchewan.

1979-80, c.92, s.9.

Actions in court

62 An action to recover benefits or insurance money shall be taken in the court.

1979-80, c.92, s.9,

63 Repealed. 1988-89, c.37, s.5. (*see* Editorial Appendix)

Consolidation of actions for benefits or insurance money

64(1) Where several actions are brought for the recovery of benefits or insurance money payable under this Act in respect of a single accident, the court may consolidate the actions or otherwise deal therewith in order that there shall be but one action for and in respect of all the claims made in the actions.

(2) In all actions where several persons are entitled to benefits or insurance money payable under this Act, the court may apportion among the persons entitled thereto any sum directed to be paid, and may give all necessary direction and relief.

R.S.S. 1965, c.409, s.61; R.S.S. 1978, c.A-35, s.64.

Relief from forfeiture

65 Where there has been imperfect compliance with the statutory conditions as to the proof of claim or proof of loss to be given by an insured or other claimant or as to any other matter or thing required to be done or omitted by an insured or other claimant with respect to a loss, and a consequent forfeiture or avoidance of the benefits or insurance money, in whole or in part, and the court considers it inequitable that the benefits or insurance money should be forfeited or avoided on that ground, the court may relieve against the forfeiture or avoidance on such terms as it may consider just.

R.S.S. 1965, c.409, s.62; R.S.S. 1978, c.A-35, s.65.

c. A-35**AUTOMOBILE ACCIDENT INSURANCE****Proof of intoxication**

66(1) For the purposes of this Act, a person is conclusively deemed to be under the influence of alcohol or drugs to the extent the person was incapable for the time being of having proper control of a motor vehicle if the person is convicted of an offence pursuant to:

- (a) section 253, subsection 254(5) or subsection 255(2) or (3) of the *Criminal Code*; or
 - (b) a law of a state of the United States of America that is substantially similar to an offence mentioned in clause (a).
- (2) Subsection (1) applies to a person whether or not the person:
- (a) is a party to an action or proceeding pursuant to this Act;
 - (b) is a witness at the trial; or
 - (c) has first been questioned in an action or proceeding pursuant to this Act as to whether he or she has been convicted of that offence.

2002, c.44, s.22.

Proof of conviction

66.1 For the purposes of section 66, a certificate purporting to be signed by a judge of the convicting court or other officer having custody of the records of the convicting court certifying that the insured has been convicted of an offence mentioned in section 66 is admissible in evidence as proof, in the absence of evidence to the contrary, of the conviction of the insured without proof of the handwriting or position of the person purporting to have signed the certificate.

2002, c.44, s.22.

PART VI

Miscellaneous

Change in capacity to operate vehicle

67 A person named in a certificate shall forthwith notify the insurer of the occurrence of any affliction or injury likely to affect his capacity to operate a motor vehicle.

R.S.S. 1965, c.409, s.64; R.S.S. 1978, c.A-35, s.67.

Reports of accidents

68(1) In this section and in sections 69 to 71:

- (a) **“accident report”** means an accident report that meets the requirements of Division 7 of Part XVI of *The Traffic Safety Act*;
- (b) **“police officer”** means a peace officer as defined in *The Traffic Safety Act*;

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

- (c) **“unidentified motor vehicle”** means a motor vehicle:
 - (i) that causes:
 - (A) bodily injury to or the death of a person arising out of physical contact of the motor vehicle with the person or with the motor vehicle of which the person is an occupant; or
 - (B) property damage arising out of physical contact of the motor vehicle; and
 - (ii) with respect to which:
 - (A) the names of both the owner and the person in charge of the motor vehicle are not ascertainable;
 - (B) the name of the owner is not ascertainable and the motor vehicle has no person who was in charge of it; or
 - (C) the name of the person in charge of the motor vehicle is not ascertainable and the owner is not liable for the actions of that person.
- (2) In the circumstances mentioned in subsection (3), the person in charge of a motor vehicle that is involved in an accident shall:
 - (a) report the accident to the nearest police officer as soon as is practicable after the accident; and
 - (b) provide the police officer mentioned in clause (a) with any information or written statement concerning the accident that the police officer may reasonably require to complete an accident report.
- (3) The duty to report an accident to a police officer pursuant to subsection (2) applies if the accident:
 - (a) involves bodily injuries or death;
 - (b) involves an unidentified motor vehicle;
 - (b.1) involves a motor vehicle for which no certificate of registration has been issued pursuant to *The Vehicle Administration Act*;
 - (c) involves a motor vehicle that was towed from the scene of the accident as a result of the accident; or
 - (d) involves a person in charge of a motor vehicle who was apparently under the influence of alcohol or drugs to such an extent as to be incapable for the time being of having proper control of the motor vehicle.
- (4) If the person in charge of a motor vehicle involved in an accident is physically incapable of making a report required pursuant to subsection (2), another occupant, if any, of that motor vehicle shall make that report.

c. A-35**AUTOMOBILE ACCIDENT INSURANCE**

- (5) Every person who sustained a bodily injury as a result of a motor vehicle accident and who is physically capable of making a report shall make a report in the same manner as that required by the person in charge of a motor vehicle pursuant to subsection (2).
- (6) A police officer who receives a report of a motor vehicle accident shall:
 - (a) secure from the person making the report, or by other inquiries if necessary, any particulars of the accident necessary to complete an accident report;
 - (b) prepare an accident report; and
 - (c) transmit the accident report to the insurer.
- (7) The insurer may require:
 - (a) any person involved in an accident or having knowledge of an accident or of any bodily injuries or property damage resulting from an accident to furnish any information that is necessary to complete an accident report; or
 - (b) a police officer to secure any information that is necessary to complete an accident report.
- (8) In a prosecution for a contravention of this section, a certificate of the insurer or the chief, deputy chief or person in charge of the police service or unit responsible for providing police services in the municipality where an accident mentioned in this section occurred that a report has not been filed is admissible as proof, in the absence of evidence to the contrary, of the facts stated in the certificate and of the authority of the person issuing the certificate, without proof of the appointment or signature of the person who completed the certificate.

2002, c.44, s.23; 2004, c.T-18.1, s.297 and 299;
 2004, c.35, s.18; 2005, c.5, s.6.

Duty of police officer

- 69(1)** A police officer receiving a report of an accident pursuant to section 68 must obtain from the person making the report, and by any other inquiries if necessary, full particulars of the accident including:
- (a) the persons involved;
 - (b) the extent of the bodily injuries or property damage, if any, arising out of the accident; and
 - (c) the purpose for which any vehicle involved in the accident was being used.
- (2) For the purposes of subsection (1), a police officer may request any persons involved in or having knowledge of the accident to furnish any additional information the police officer may require.
- (3) No person to whom a request is made pursuant to subsection (2) shall fail to comply with that request.

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

(4) A police officer must make any supplementary reports of the accident that the insurer may consider necessary:

- (a) to complete its records; and
- (b) to establish as far as possible:
 - (i) the cause of the accident;
 - (ii) the persons responsible for the accident; and
 - (iii) the extent of the bodily injuries and property damage, if any, arising out of the accident.

2002, c.44, s.23.

Additional reports

70(1) The insurer may request any person involved in an accident, or having knowledge of an accident, to furnish any additional information respecting the accident and to make any supplementary reports of the accident that the insurer considers necessary:

- (a) to complete its records; and
- (b) to establish as far as possible:
 - (i) the cause of the accident;
 - (ii) the persons responsible for the accident; and
 - (iii) the extent of the bodily injuries and property damage, if any, arising out of the accident.

(2) The insurer may direct the manner in which and the time within which a request made pursuant to subsection (1) must be complied with.

(3) No person to whom a request is made pursuant to this section shall fail to comply with that request.

2002, c.44, s.23.

Limits on public inspection re reports and statements

71(1) A written report or statement made or furnished pursuant to section 68, 69 or 70 is deemed to be made without prejudice and for the information of the insurer.

(2) The insurer shall keep any written report or statement mentioned in subsection (1) confidential and is not required to make any written report or statement available for public inspection.

(3) The fact that any written report or statement has been made or furnished pursuant to section 68, 69 or 70 is admissible in evidence solely to prove compliance with that section, but the written report or statement is not admissible in evidence for any other purpose in any trial arising out of an accident.

c. A-35**AUTOMOBILE ACCIDENT INSURANCE**

(4) Notwithstanding subsections (1) and (2), the insurer may make available to persons engaged in road safety research any information contained in any written report or statement received by it pursuant to section 68, 69 or 70.

(5) Subject to section 9 of *The Traffic Safety Act*, no person who receives any information pursuant to subsection (4) shall make that information public in a form that would enable any particulars to be identified as being related to any specific person or business.

2002, c.44, s.23; 2004, c.T-18.1, s.297.

Duty of physician

72 Every physician and every surgeon, chiropractor, physiotherapist, psychologist, massage therapist or dentist treating or attending or consulted upon any case of injury to a person involved in a motor vehicle accident shall furnish a report in respect of the injury forthwith and from time to time to the insurer in such form as the insurer may prescribe.

R.S.S. 1965, c.409, s.70; R.S.S. 1978, c.A-35, s.72; 1994, c.34, s.12.

Duty of employer

73 Every employer shall at the request of the insurer furnish forthwith a sworn statement of the earnings of any person by or in respect of whom benefits are claimed in such form as the insurer may prescribe.

R.S.S. 1965, c.409, s.71; R.S.S. 1978, c.A-35, s.73.

Offence

74(1) A person who fails to do any act or thing or to perform any duty under sections 68 to 73 is guilty of an offence and liable on summary conviction to a fine not exceeding \$50.

(2) Where such person is charged with an offence, the onus of proving that any report or statement was furnished in accordance with the appropriate provisions of sections 68 to 73 shall be upon him.

R.S.S. 1965, c.409, s.72; R.S.S. 1978, c.A-35, s.74.

Notices, how given

75 A notice to be given by the insurer to an insured for any of the purposes of this Act, when the mode of giving the notice is not otherwise expressly provided, may be given by mailing it by prepaid post addressed to the insured at the post office address given in his original application for insurance or otherwise notified in writing to the insurer.

R.S.S. 1965, c.409, s.73; R.S.S. 1978, c.A-35, s.75.

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

Effect of delivery of receipt for premium

76 Where a receipt for the premium under this Act has been delivered it shall be as binding on the insurer as if the certificate has been delivered although in fact it has not been delivered, and where a licence plate has been issued pending the issue of a certificate of registration the licence plate shall be deemed a receipt for the premium for the purpose of this section; provided that the receipt or the licence plate shall have no effect under this section from and after the granting of a certificate or from the notification of a refusal of the application for a certificate.

R.S.S. 1965, c.409, s.74; R.S.S. 1978, c.A-35, s.76.

Waiver to be in writing

77 No term or condition of this Act shall be deemed to be waived by the insurer in whole or in part unless the waiver is stated in writing and signed by an officer of the insurer.

R.S.S. 1965, c.409, s.75; R.S.S. 1978, c.A-35, s.77.

***Ex gratia* payments**

77.1 Where the insurer considers that a payment of a claim is in the interest of the insurer and the better administration of this Act, the insurer may authorize an *ex gratia* payment to be made.

1984-85-86, c.1, s.37; 1994, c.34, s.13.

Use of annuities

77.2 The insurer may pay an indemnity pursuant to Part II or a benefit pursuant to Part II.1 or Part VIII by means of an annuity if the insurer and the person entitled to the indemnity or benefit agree.

1998, c.18, s.11; 2015, c.28, s.17.

Misrepresentation, fraud, violation of Act, etc., renders claim invalid

78(1) Subject to subsection (2), where:

- (a) an applicant for an owner's certificate has falsely described the vehicle in respect of which the application is made to the prejudice of the insurer;
- (b) an applicant for an owner's certificate or operator's certificate knowingly misrepresents or fails to disclose in the application a fact required to be stated therein; or
- (c) an insured violates a term or condition of this Act or commits a fraud or makes a wilfully false statement with respect to a claim under this Act;

any claim by or in respect of the applicant or the insured shall be rendered invalid and his right and the right of every other person claiming through, on behalf of or as a dependant of the applicant or the insured to benefits and insurance money shall be forfeited.

c. A-35**AUTOMOBILE ACCIDENT INSURANCE**

(2) If an insured suffers a catastrophic injury or dies as a result of an accident, no contravention of any provision of statutory condition 1 set out in section 35 is to defeat or impair any claim made by or with respect to the insured for the benefits provided for in Part II if all other applicable terms and conditions of this Act have been complied with.

(3) **Repealed.** 2015, c.28, s.18.

(4) **Repealed.** 2015, c.28, s.18.

R.S.S. 1965, c.409, s.76; R.S.S. 1978, c.A-35, s.78; 2002, c.44, s.24; 2015, c.28, s.18.

79 Repealed. 2002, c.44, s.25.

Subrogation - payments pursuant to Parts II, III and IV

80(1) If the insurer makes any payment pursuant to Part II, III or IV or assumes any liability pursuant to Part II, III or IV, the insurer is subrogated to and deemed to be an assignee of all rights of recovery of the person to whom or on whose behalf or with respect to whom any benefits or insurance money was or is to be paid or provided.

(2) Notwithstanding subsection (1), if the insurer makes any payment pursuant to Part II, III or IV with respect to loss, damage, injury or death caused by the fault of an operator or owner designated in an unexpired operator's certificate or an unexpired owner's certificate, the insurer may bring an action in its own name or join in an action pursuant to this section against that operator or owner only where that operator or owner has forfeited the right to claim any or all payments pursuant to Part II, III or IV by reason of section 78.

(3) If the net amount recovered, whether by action or settlement, is, after deducting the cost of recovery, not sufficient to provide complete indemnity for the loss or damage suffered, the amount remaining is to be divided between the insurer and the insured in proportion to the loss or damage that has been borne by each of them.

(4) If recovery is limited pursuant to this section to the amount paid or provided pursuant to Part II, III or IV, the insurer is entitled to have control of the action and may bring a separate action in its own name to recover the amount paid or provided.

(5) If the interests of the insured in any recovery exceed the amount mentioned in subsection (4):

(a) the insurer may join with the person to whom or on whose behalf or with respect to whom the payment is made to bring one action in the name of the person for recovery of the damages resulting from the loss, damage, injury or death; and

(b) the insured and the person to whom or on whose behalf or with respect to whom the payment is made may agree to any arrangements as to the apportionment of the costs of recovery.

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

(6) If an action is brought pursuant to subsection (5) and the insurer and insured cannot agree as to all or any of the following matters, either party may apply to the court for the determination of those matters:

- (a) the lawyers to be instructed to bring an action in the name of the insured;
- (b) the conduct or carriage of the action or any matter relating to the action;
- (c) any offer of settlement or apportionment of the offer of settlement, whether an action has been commenced or not;
- (d) the acceptance of any money paid into court or the apportionment of that money;
- (e) the apportionment of costs;
- (f) the launching or prosecution of an appeal.

(7) On an application pursuant to subsection (6), the court may make any order that it considers reasonable having regard to the interests of the insurer and the insured in any recovery in the action or proposed action or in any offer of settlement.

(8) On an application pursuant to subsection (6), the only parties entitled to receive notice and to be heard are the insurer and the insured, and no material or evidence used on the application is admissible in any legal proceedings brought by or against the insurer or the insured.

(9) Subject to subsection (6), if a person is notified that the insurer has made or is making a claim or commencing a proceeding pursuant to subsections (4) and (5):

- (a) that person shall not negotiate settlement of any claim to the prejudice of the insurer except at that person's own cost; and
- (b) if that person has received benefits or insurance money, that person:
 - (i) shall not interfere in any negotiations for settlement or in any legal proceeding but whenever requested to do so by the insurer shall aid in securing information and evidence and the attendance of any witness; and
 - (ii) shall co-operate with the insurer in any action or proceeding or in the prosecution of any appeal.

(10) A settlement or release given before or after an action is brought pursuant to subsection (6) does not bar the rights of the insurer or the insured, as the case may be, unless they have concurred in the settlement or release.

(11) If the insurer is entitled to bring or join in an action against any person pursuant to this section, in assessing the damages, no account shall be taken for the benefit of that person of the benefits or insurance money paid or payable pursuant to Part II, III or IV with respect to the loss, damage, injury or death caused by the fault of that person whether or not the right assigned to the insurer and to which the insurer is subrogated arises pursuant to *The Fatal Accidents Act* or otherwise.

c. A-35**AUTOMOBILE ACCIDENT INSURANCE****Insurer subrogated**

80.1(1) This section applies where:

- (a) loss or damage to a vehicle that is designated in an owner's certificate is caused by a person who is in the course of committing, who has committed or who has attempted to commit an offence pursuant to one of the following provisions of the *Criminal Code*:
 - (i) section 322;
 - (ii) section 335;
 - (ii.1) section 354;
 - (iii) clause 430(1)(a) or (b); and
 - (b) the insurer makes or assumes a liability to make a payment, with respect to the loss or damage mentioned in clause (a).
- (2) This section applies whether or not the person mentioned in clause (a) is convicted of the offence.
- (3) Where the insurer makes or assumes a liability to make a payment mentioned in clause (1)(b), the insurer is subrogated to and deemed to be an assignee of all rights of recovery of the person to whom, with respect to whom or for whose benefit the payment is made or is payable against any other person responsible for the loss or damage.
- (3) Where the insurer makes or assumes a liability to make a payment mentioned in clause (1)(b), the insurer is subrogated to and deemed to be an assignee of all rights of recovery of the person to whom, with respect to whom or for whose benefit the payment is made or is payable against any other person responsible for the loss or damage.
- (4) In the circumstances mentioned in subsection (3), the insurer may:
- (a) bring a separate action in its own name to recover the amount of the payment; or
 - (b) join with the person to whom, with respect to whom or for whose benefit the payment is made or is payable to bring one action in the name of that person for recovery of the damages resulting from the loss or damage.
- (5) Notwithstanding clause (4)(a), the person to whom or with respect to whom or for whose benefit the payment is made or is payable may bring an action in that person's own name for the amount by which the loss or damage sustained by the person exceeds the amount paid or payable by the insurer.
- (6) For the purposes of clause (4)(b), the insurer and the person to whom or with respect to whom or for whose benefit the payment is made or is payable may make an arrangement to apportion the costs of recovery.
- (7) Where the insurer is entitled to bring or join an action pursuant to this section against another person, no account must be taken for the benefit of that other person of the payments made or payable pursuant to this Act with respect to the loss or damage caused by the other person.

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

(8) For the purposes of Part XII of *The Traffic Safety Act*, where the insurer obtains a judgment against a person responsible for the loss or damage:

- (a) the judgment is to be treated as if it were a judgment for damages on account of damage to property; and
- (b) the administrator may deal with the person against whom the insurer obtains a judgment as if that person were a person against whom a judgment for damages on account of damage to property was obtained.

1998, c.18, s.12; 2000, c.5, s.15; 2004, c.T-18.1, s.299.

Suspension pending recovery of payments

80.2(1) Where the insurer has made a payment pursuant to Part II, III or IV of this Act with respect to loss, damage, injury or death caused by the fault of an operator of a motor vehicle, the administrator may suspend the driving privileges of the operator if the operator:

- (a) was violating a provision of this Act or a statutory condition imposed by this Act; and
- (b) pursuant to this Act, is liable to reimburse the insurer for that payment.

(2) Where the administrator suspends the driving privileges of an operator pursuant to subsection (1), the administrator shall not issue a driver's licence to that operator or renew a driver's licence of that operator and may refuse to issue a permit or certificate of registration with respect to a motor vehicle to that operator or renew a permit or certificate of registration with respect to a motor vehicle issued to that operator until the operator:

- (a) has furnished proof of financial responsibility in a form and to the amount prescribed by Part XII of *The Traffic Safety Act*; and
- (b) has executed under seal an undertaking to repay the amount paid by the insurer pursuant to Part II, III or IV of this Act.

(3) Where a person is in default on the undertaking mentioned in subsection (2) for a period of 10 days, the administrator shall suspend the person's driving privileges, the person's privilege to register a motor vehicle and any driver's licence and any permit or certificate of registration for a motor vehicle issued to or with respect to that person pursuant to *The Traffic Safety Act*.

2000, c.5, s.16; 2004, c.T-18.1, s.297 and 299;
2004, c.35, s.19.

c. A-35**AUTOMOBILE ACCIDENT INSURANCE****Regulations**

81(1) In addition to the powers conferred by *The Saskatchewan Government Insurance Act, 1980*, the Lieutenant Governor in Council may make regulations for the purpose of the better carrying out of the provisions of this Act according to its true intent and supplying any deficiency therein, and without prejudice to the generality of the foregoing the Lieutenant Governor in Council may make regulations:

- (a) providing for and prescribing the conditions governing the refund or rebate of the whole or part of any premium paid to the insurer under this Act;
- (b) defining, enlarging or restricting the meaning of any word or expression used in this Act;
- (b.1) exempting any motor vehicle or trailer or any class of motor vehicle or trailer from the application of this Act or any provision of this Act;
- (c) classifying vehicles for the purposes of Part III and fixing a maximum value for vehicles in each such class and the insurer shall not be liable under Part III for any amount beyond such maximum value notwithstanding anything to the contrary therein contained;
- (d) prescribing the amount of loss or damage constituting a chargeable accident under section 6;
- (d.1) prescribing offences as chargeable incidents for the purposes of paragraphs 6(1)(a)(ii)(A) and (E);
- (d.2) prescribing the manner in which chargeable incidents are to be recorded against a driver;
- (d.3) prescribing the manner in which a driver's safety rating is to be determined;
- (e) respecting the amount of the surcharge that a driver is required to pay pursuant to this Act and providing for variations in the amount of the surcharge depending on the driver's safety rating;
- (e.1) respecting the amount of the discount that a driver is entitled to receive pursuant to this Act and providing for variations in the discount based on the driver's safety rating;
- (e.2) respecting the type of motor vehicles or classes of motor vehicles that qualify for a discount;
- (e.3) respecting the time and manner in which a surcharge is required to be paid;
- (e.4) classifying motor vehicles for the purposes of this Act and the regulations based on any criteria that the Lieutenant Governor in Council considers appropriate, including classifying motor vehicles according to their ownership;
- (e.5) respecting the types of motor vehicles or classes of motor vehicles that are subject to a declaration made pursuant to section 8;

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

- (e.6) respecting the amount of the discount from the basic premium that an owner of a motor vehicle may receive pursuant to a declaration made pursuant to section 8;
- (e.7) respecting the amount of any addition to the basic premium that may be required to be paid pursuant to a declaration made pursuant to section 8;
- (e.71) respecting the discounts from the basic premium or additions to the basic premium that are applicable to commercial motor vehicles registered pursuant to the International Registration Plan and authorizing the insurer to calculate those discounts or additions;
- (e.8) respecting the manner in which and the period within which an appeal may be made pursuant to section 10.1;
- (e.81) prescribing the board's authority to review the insurer's decision pursuant to section 8;
- (e.9) prescribing the manner in which and the terms and conditions under which a review pursuant to section 10.1 may be conducted;
- (f) prescribing the amount of property damage for the purposes of section 51;
- (g) prescribing the amounts of benefits and supplemental allowance pursuant to Part II and Part II.1;
- (h) respecting the fee to be paid pursuant to subsection 7.2(4) or section 10.1;
- (h.1) respecting the manner in which hearings are scheduled pursuant to subsection 7.2(8), including the notices to be sent to the driver;
- (i) fixing the amount of the deductible for the purposes of Part III for any class of vehicles and vehicles within any class of vehicle;
- (j) fixing the maximum value for any class of vehicles or vehicles within any class of vehicles for the purposes of Part III;
- (k) defining "equipment" for the purpose of Part III;
- (k.1) prescribing types of sound equipment and communications equipment to which clause 38(3)(e) does not apply;
- (k.2) prescribing types of equipment for the purposes of clause 38(3)(h);
- (k.3) prescribing types of loss or damage for the purposes of clause 38(3)(i);
- (k.4) prescribing limits to loss or damage for the purposes of clause 38(3)(j);
- (l) fixing the maximum value of any part or item of equipment of a vehicle for the purposes of Part III;
- (m) fixing the remuneration and reimbursement for expenses that members of the Rates Appeal Board are entitled to receive;
- (n) prescribing the extent to which Part III applies to a certificate issued in conjunction with a permit or other authorization to drive, and prescribing the terms and conditions to which the permit is subject;

c. A-35**AUTOMOBILE ACCIDENT INSURANCE**

- (o) prescribing the maximum limit to which the insurer is required to insure any class of vehicles or vehicles within a class of vehicles under Part III;
- (p) providing for rewards for owners or drivers of vehicles according to their safety records and prescribing the criteria for determining eligibility for and the amount of rewards;
- (q) prescribing any other matter or thing that is authorized or required to be prescribed in the regulations;
- (r) respecting applications for the payment of basic premiums in instalments and the payment of basic premiums in instalments;
- (s) respecting the persons or categories of persons who may apply to and who may pay a basic premium in instalments;
- (t) prescribing terms and conditions with respect to applications for the payment of basic premiums in instalments and the payment of basic premiums in instalments;
- (u) respecting the calculation of instalment payments mentioned in clause (r);
- (v) defining:
 - (i) when a basic premium or portion of a basic premium has been earned or is deemed to have been earned; and
 - (ii) when a basic premium or portion of a basic premium is due and payable or is deemed to be due and payable;
- (v.1) respecting the application of Part IX of the *Insurance Companies Act* (Canada) to section 92 of this Act;
- (v.2) respecting any investment authorized pursuant to subclause 92(1)(a)(i);
- (w) prescribing and governing fees to be paid or that may be charged with respect to any matter regulated pursuant to this Act or the regulations;
- (x) respecting the procedures applicable to, and the proof required for, claims for compensation pursuant to Part II or Part II.1;
- (y) respecting the form and content of any proof of loss required for the purposes of Part II or Part II.1;
- (z) defining catastrophic injuries for the purposes of Part II or Part II.1;
- (aa) prescribing practitioners for the purposes of Parts II to VII;
- (bb) prescribing a motor vehicle or class of motor vehicles for the purposes of subclause 20(3)(b)(vii) and 35.11(2)(b)(ii);
- (cc) respecting the manner of calculating the weekly benefits payable pursuant to sections 22, 22.1, 23, 24, 24.1, 25, 35.2, 35.21, 35.22, 35.23, 35.24 and 35.25;

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

- (cc.1) prescribing other benefits that the insurer shall consider for the purposes of sections 26 and 35.26;
- (dd) respecting the medical and rehabilitation benefits payable pursuant to section 21 or 35.14;
- (dd.1) respecting the calculation of a death benefit pursuant to sections 27, 27.1, 35.3 and 35.31;
- (dd.2) respecting the reimbursement of expenses, the terms and conditions under which the insurer may reimburse expenses and the maximum amounts that may be reimbursed;
- (ee) prescribing the maximum yearly insurable earnings for which weekly death benefits will be provided pursuant to section 27 or 35.3;
- (ff) respecting the calculation of the insured's net income pursuant to section 27 or 35.3;
- (gg) respecting the manner of paying a death benefit for the purposes of subsection 27.1(5) or 35.31(5);
- (hh) respecting the capitalization pursuant to section 27.2 or 35.32;
- (ii) respecting the establishment of a schedule of permanent impairment and the payment of a permanent impairment benefit pursuant to sections 28, 28.1, 29, 35.4, 35.41 and 35.5;
- (ii.1) prescribing the manner in which the insurer may determine the consumer price index for the purposes of Parts II and II.1;
- (ii.2) for the purposes of sections 30.3 and 35.83, authorizing the use of ratios calculated pursuant to sections 30.2 and 35.82, respectively;
- (ii.3) prescribing any matter necessary for the purposes of section 35.91;
- (ii.4) respecting the release of information pursuant to statutory condition 5 set out in section 35 and pursuant to section 35.62;
- (jj) respecting examinations pursuant to statutory condition 4 set out in section 35 and section 35.63, including the content of reports based on examinations, the reimbursement of expenses incurred by the insured to undergo an examination and the costs for medical reports;
- (jj.1) respecting the manner in which the insurer shall determine responsibility for an accident pursuant to section 35.11;
- (jj.2) respecting the form and content of a change in coverage;
- (jj.3) respecting the type, size or class of motorcycle for which a motorcycle election may not be provided or the class of persons that is prohibited from providing a motorcycle election;

c. A-35**AUTOMOBILE ACCIDENT INSURANCE**

- (jj.4) respecting the manner in which the insured's debt to the insurer may be deducted from compensation payable to the insured by the insurer in either Part II or Part II.1;
 - (jj.5) prescribing the circumstances in which benefits may be subject to garnishment, seizure, attachment, execution and any other process or claim pursuant to section 35.79;
 - (kk) prescribing any fees with respect to a change in coverage pursuant to section 40.4;
 - (ll) respecting structured compensation orders pursuant to section 41.1 or 41.12;
 - (ll.1) prescribing persons or classes of persons who are third parties for the purposes of Part IV of the Act;
 - (ll.2) prescribing persons or classes of persons as insured for the purposes of clause 41.12(1)(b) or 41.13(1)(a);
 - (mm) respecting any other matter the Lieutenant Governor in Council considers necessary to carry out the intent of this Act.
- (2) For the purposes of subsection (1), the Lieutenant Governor in Council may:
- (a) adopt, or authorize the insurer to adopt, by reference any specifications, standards or codes as amended from time to time or otherwise;
 - (b) amend, or authorize the insurer to amend, for the purposes of this Act any specifications, standards or codes adopted pursuant to clause (a); and
 - (c) require compliance with any specifications, standards or codes adopted pursuant to clause (a).
- (3) Notwithstanding any other Act or law, any regulations made pursuant to this section may be made retroactive to a day not earlier than July 1, 2002.

R.S.S. 1965, c.409, s.79; 1968, c.7, s.8; R.S.S. 1978, c.A-35, s.81; 1980-81, c.34, s.20 and c.83, s.3; 1984-85-86, c.1, s.39; 1992, c.20, s.5; 1994, c.34, s.15; 2000, c.5, s.17; 2002, c.44, s.27; 2004, c.35, s.20; 2015, c.28, s.19.

Exemption

- 81.1(1)** The administrator may exempt a person from the application of any provision of Part I, III or IV of the Act or any provision of the regulations where, in the opinion of the administrator:
- (a) the application of the provision would cause a hardship to the person or to other residents of Saskatchewan; and
 - (b) granting the exemption would not be contrary to the public interest.

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

(2) The administrator shall not grant an exemption pursuant to subsection (1) where the exemption would:

- (a) interfere with a decision of the board; or
- (b) remove any right to a hearing or right of appeal granted pursuant to this Act.

2000, c.5, s.18.

Right of access to records, etc.

82 Notwithstanding anything to the contrary in any statute or law, the insurer shall have access to all documents, books, reports, records and other things and to all facilities of, belonging to or available to any department, board, commission or corporation of or carried on in behalf of the Government of Saskatchewan, as the insurer may in its discretion consider necessary or desirable for the better carrying out of this Act, the provisions of *The Saskatchewan Government Insurance Act, 1980* and the regulations.

R.S.S. 1965, c.409, s.80; R.S.S. 1978, c.A-35, s.82; 1980-81, c.83, s.3.

Powers additional to existing powers

83(1) Saskatchewan Government Insurance shall carry out the provisions of this Act and do all acts and things necessary and incidental to carrying out its provisions, and, for greater certainty and without prejudice to the generality of the foregoing, Saskatchewan Government Insurance has the power:

- (a) to introduce, establish, promote, supervise and finance an educational program relating to safety practices on the public highways;
- (b) to recommend to the administrator the suspension or cancellation of any licence or other permit to drive or of the registration of any motor vehicle of any person;
- (c) **Repealed.** 1983, c.66, s.2.
- (d) to receive from the Minister of Finance all moneys appropriated to it for the same use and in the same manner as all other moneys received by it for the purposes of this Act.

(2) A person authorized under the regulations to accept applications for insurance and premiums in payment thereof shall be deemed not to be an agent within the meaning of any statute that requires the licensing of insurance agents.

(3) A person appointed to settle or adjust any claim for indemnity arising out of this Act shall be deemed not to be an adjuster within the meaning of any statute that requires the licensing of insurance adjusters.

R.S.S. 1965, c.409, s.81; 1973-74, c.5, s.1; 1976-77, c.7, s.7; R.S.S. 1978, c.A-35, s.83; 1980-81, c.34, s.21; 1983, c.66, s.2; 1986, c.33, s.2.

c. A-35**AUTOMOBILE ACCIDENT INSURANCE*****Saskatchewan Insurance Act does not apply***

84(1) *The Saskatchewan Insurance Act* does not apply to insurance under this Act.

(2) Insurance provided under this Act shall be deemed not to be “other insurance” or “additional insurance” within the meaning of section 224 of *The Saskatchewan Insurance Act*, or any policy of insurance subject to the said section or containing any term to the same or like effect as subsection (1) or (2) of the said section.

R.S.S. 1965, c.409, s.82; R.S.S. 1978, c.A-35, s.84; 1980-81, c.34, s.22.

Act to prevail

85 Wherever there is any conflict or repugnancy between this Act and any other Act this Act shall prevail.

R.S.S. 1965, c.409, s.83; R.S.S. 1978, c.A-35, s.85.

No action, etc., against persons administering Act

86 No action whatever, and no proceeding by way of injunction, *mandamus*, prohibition or other extraordinary remedy shall lie or be instituted against any person in respect of any *bona fide* act or omission in connection with the administration or carrying out of the provisions of this Act or the regulations.

R.S.S. 1965, c.409, s.84; R.S.S. 1978, c.A-35, s.86.

Immunity

86.1 No action lies or shall be instituted against any director, officer, employee or agent of the insurer, a licence issuer or any employee of the office of the licence issuer, where the person is acting pursuant to the authority of this Act or the regulations, for any loss or damage suffered by any person by reason of anything in good faith done, caused or permitted or authorized to be done, attempted to be done or omitted to be done, by any one or more of them pursuant to or in the exercise or supposed exercise of any power conferred by this Act or the regulations or in the carrying out or supposed carrying out of any duty imposed by this Act or the regulations, including providing advice or instruction to an individual concerning the available options with respect to insurance coverage pursuant to this Act.

2002, c.44, s.28.

Offence – general

86.2 Every person who contravenes any provision of this Act or the regulations is guilty of an offence and liable on summary conviction to a fine of not more than \$1,000.

2002, c.44, s.28.

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

PART VII
The Saskatchewan Auto Fund

Fund established

87(1) The Saskatchewan Auto Fund is hereby established.

(2) The insurer shall:

(a) subject to the direction and control of the board of directors of the fund, administer the fund; and

(b) use the fund solely in its capacity as the designated insurer under this Act.

(3) The fund may contain property of every nature and kind.

1983-84, c.1, s.5.

Board of directors

88(1) The board of directors of the insurer is the board of directors of the fund.

(2) The board of directors of the fund shall direct and control the fund.

1983-84, c.1, s.5.

Property to belong to Crown

89 All property in the fund, both real and personal, all moneys acquired, administered, possessed or received from any source and all profits earned by the insurer as administrator of the fund are the property of Her Majesty in right of Saskatchewan.

1983-84, c.1, s.5.

Accounting

90 The insurer shall keep and maintain accounts for the fund that are separate and distinct from its other accounts.

1983-84, c.1, s.5.

Revenues and expenditures

91(1) The fund is to be credited with:

(a) all premiums and other moneys required to be paid into the fund pursuant to this Act;

(b) all assets that are deemed to be assets of the fund pursuant to section 99;

(c) all interests and dividends received on investments of the fund;

(d) any gains on disposals of investments of the fund.

(2) The insurer may pay out of the fund:

(a) any benefits, insurance money, damages, compensation or costs it is required to pay pursuant to this Act;

c. A-35**AUTOMOBILE ACCIDENT INSURANCE**

- (b) any liabilities for which the fund is deemed to be responsible pursuant to section 99;
- (c) all capital costs and operating costs incurred in carrying out and enforcing the provisions of this Act;
- (d) all costs and operating expenses incurred in the establishment, operation and staffing of the Automobile Injury Appeal Commission pursuant to Part VIII; and
- (e) any expenditure in addition to those mentioned in clauses (a) to (d) that the insurer is authorized to make pursuant to this Act.

1983-84, c.1, s.5; 1984-85-86, c.1, s.40; 2002,
c.44, s.29.

Investments

92(1) Subject to subsection (2) and the regulations, the insurer:

- (a) may invest moneys of the fund that are not presently required for the purposes of the fund:
 - (i) in investments authorized for Crown corporations pursuant to *The Crown Corporations Act, 1993*; or
 - (ii) in investments authorized pursuant to Part IX of the *Insurance Companies Act* (Canada); and
 - (b) may dispose of any investments on any terms and in any manner that it considers expedient.
- (2) Notwithstanding subsection (1), the insurer may hold and deal with any investment that it made on or before March 1, 1994.
- (3) For the purposes of managing, investing or disposing of all or any part of the assets of the fund, the insurer may:
- (a) enter into any agreement it considers necessary;
 - (b) engage the services of or retain any technical, professional or other advisers, specialists or consultants it considers necessary; or
 - (c) do any other thing it considers necessary.
- (4) The costs incurred pursuant to subsection (3) and other expenses related to managing, investing or disposing of all or any part of the assets of the fund are a charge on and payable out of the fund.

1994, c.34, s.16.

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

Powers of insurer

93(1) The insurer may, in the course of acting as administrator of the fund:

- (a) engage in and carry on the business of insurance;
- (b) perform any functions of the Government of Saskatchewan or agency of the Government of Saskatchewan that may be authorized under any statute, regulation or order or that may be assumed under any agreement with the Government of Saskatchewan or other agency, and may stipulate for and receive any compensation with respect to the functions performed by it that the statute, order, regulation or agreement allows;
- (c) undertake research into and provide services in relation to loss prevention and control, rehabilitation and generally any means of reducing the risk of loss, damage or injury to persons or property and the consequences thereof;
- (d) give any undertakings and enter into any agreements that may be authorized or required under the law of any province, state or country in relation to any instrument or class of instruments of insurance that have been or may be issued pursuant to this Act;
- (e) enter into agreements with any other person, organization or institution providing the same or similar services, whether within or outside Saskatchewan, for the purpose of providing jointly with that person, organization

or institution any such services, or for any other purpose in which the insurer and the person, organization or institution have a common interest;

- (f) acquire by purchase or otherwise, hold as owner, tenant or otherwise, and take options on, for its own use and benefit, real and personal property:
 - (i) necessary or required for the conduct of its business;
 - (ii) conveyed, mortgaged or hypothecated to it by way of security;
 - (iii) acquired and held by it as an investment; or
 - (iv) conveyed to it in satisfaction in whole or in part in respect of debts and judgments;
- (g) sell, lease or otherwise dispose of the whole or any part of any property described in clause (f); and
- (h) engage in or carry on any business or activity that is ancillary to the business of insurance.

(2) Subject to the approval of the Lieutenant Governor in Council, the insurer, may in the course of acting as administrator of the fund, borrow, by way of temporary loans from any chartered bank or credit union or from any person or corporation, any sums, on any terms, for any purposes and on any conditions that the insurer may determine:

- (a) by way of bank overdraft or line of credit;

c. A-35**AUTOMOBILE ACCIDENT INSURANCE**

- (b) by the pledging, as security for those temporary loans, of notes, bonds, debentures or other securities of the insurer pending the sale of those securities or in lieu of selling the same; or
 - (c) in any manner, in addition to those described in clauses (a) and (b), that the insurer may determine.
- (3) For the purposes of subsection (2), the insurer may execute any cheques, promissory notes or other instruments that may be necessary or desirable in connection with the borrowing of moneys and the obtaining of advances by way of temporary loans in any manner that the insurer may determine.

1983-84, c.1, s.5; 1986, c.33, s.2.

Annual report

94 In each fiscal year the minister shall, in accordance with section 13 of *The Executive Government Administration Act*:

- (a) submit to the Lieutenant Governor in Council:
 - (i) a report on the business of the fund for the preceding fiscal year; and
 - (ii) a financial statement showing the business of the fund for the preceding fiscal year in any form that may be required by Treasury Board; and
- (b) lay before the Legislative Assembly each report and financial statement prepared pursuant to clause (a).

1983-84, c.1, s.5; 2014, c.E-13.1, s.62.

Audit

95 The Provincial Auditor or any other auditor who is appointed by the Lieutenant Governor in Council for the purpose shall audit the books and accounts of the fund annually and at any other time or times that the Lieutenant Governor in Council may require.

1983-84, c.1, s.5; 2006, c.25, s.2.

Acts of insurer

96 Any act done by the insurer in administering this Act is deemed to be done by the insurer in its capacity as the administrator of the fund.

1983-84, c.1, s.5.

Allocation of certain costs and expenses

97 Where the insurer in the course of acting as administrator of the fund and carrying on its other business incurs costs and expenses that cannot be practicably or economically identified with the fund and the other business, the board of directors of the fund may make rules for the allocation of those costs and expenses between the fund and the other business.

1983-84, c.1, s.5.

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

Manner of holding property

98(1) The insurer shall hold property in the fund in its name, but any document indicating ownership may bear an indication that the property covered by the document forms part of the fund.

(2) Notwithstanding subsection (1), investments of the fund may be held in the name of a person other than the insurer where the investment:

(a) is held through a trust or custodial agreement; or

(b) is part of a pool of investments belonging to more than one person.

(3) Subsection (2) applies to all investments described in that subsection whether they were made before, on or after March 1, 1994.

1983-84, c.1, s.5; 1994, c.34, s.17.

Transitional

99(1) For the purposes of this section, the Lieutenant Governor in Council shall make regulations describing:

(a) the assets as at January 1, 1984 of Saskatchewan Government Insurance which are to form assets of the fund; and

(b) the liabilities as at January 1, 1984 of Saskatchewan Government Insurance which are to form liabilities of the fund.

(2) Notwithstanding any other Act, the Lieutenant Governor in Council may make a regulation amending a regulation made pursuant to subsection (1) only for the purpose of correcting any errors that are, in his opinion, typographical errors or errors in describing assets or liabilities.

(3) A regulation made pursuant to this section may be made retroactive to a day not earlier than January 1, 1984.

(4) All the assets belonging to, under the control of or standing in the name of Saskatchewan Government Insurance that are described in a regulation made pursuant to this section are transferred to and are deemed to be assets of the fund as at January 1, 1984.

(5) All the liabilities of Saskatchewan Government Insurance that are described in a regulation made pursuant to this section are transferred to and are deemed to be liabilities of the fund as at January 1, 1984 and any person having a right under those liabilities may assert that right against the insurer as administrator of the fund.

(6) For the purposes of every Land Titles Office, registry office and other public office in Saskatchewan, a regulation made pursuant to this section is a legal and valid grant, conveyance, transfer and assignment to the insurer as administrator of the fund of all lands or interests in land, all mortgages, charges, encumbrances or other documents and of all other property of every description standing in the name of, or vested in, Saskatchewan Government Insurance that are described in the regulation.

c. A-35**AUTOMOBILE ACCIDENT INSURANCE****(7) Notwithstanding any other Act:**

(a) it is not necessary to register or file this Act or a regulation made pursuant to this section or register, file or issue any further or other instrument, document or certificate or make any entry showing the transmission or assignment of title of the property mentioned in subsection (6) from Saskatchewan Government Insurance to the insurer as administrator of the fund, or in the case of lands under *The Land Titles Act*, to have a certificate of title issued in, or to have any mortgage, charge, encumbrance or other document transmitted to, the name of the insurer as administrator of the fund;

(b) in any instrument or document whereby the insurer, as administrator of the fund, deals with any of the property mentioned in subsection (6), it is sufficient to cite this Act and a regulation made pursuant to this section as effecting the grant, conveyance or transfer of title from Saskatchewan Government Insurance and the vesting of title in the insurer as administrator of the fund;

(c) it is not necessary to pay fees in connection with a grant or assignment effected by a regulation made pursuant to this section of any of the property mentioned in subsection (6).

(8) Nothing in subsection (6) affects the ability of the insurer as administrator of the fund to transfer, mortgage or otherwise deal with property vested by that subsection in the insurer as administrator of the fund.

1983-84, c.1, s.5.

PART VIII**Bodily Injury Benefits (No Fault)****DIVISION 1****Interpretation of Part****Interpretation of Part****100 In this Part:**

(a) **“appeal commission”** means the Automobile Injury Appeal Commission established pursuant to Division 11.1;

(a.1) **“current studies”** means studies that are part of a program of studies offered by an educational institution at the elementary, secondary or post-secondary level to which, at the date of an accident, a student has been admitted;

(b) **“dependant”**, with respect to an insured, means:

(i) a child of the insured who is under 21 years of age at the date of an accident and includes a child of the insured born after the accident or the death of the insured; or

(ii) any person who would qualify for a tax credit pursuant to section 118.3 of the *Income Tax Act* (Canada) for a mental or physical impairment and who is dependent on the insured for the necessities of life at the date of the accident;

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

- (c) **“educational institution”** means a prescribed educational institution or a member of a prescribed class of educational institutions;
- (d) **“elementary level”** means kindergarten, the Elementary Level and grades 6 to 8 of the Middle Level as those levels are determined pursuant to *The Education Act, 1995*;
- (e) **“income replacement benefit”** means an income replacement benefit payable pursuant to Division 4;
- (f) **Repealed.** 2005, c.5, s.7.
- (g) **“maximum yearly insurable earnings”** means the maximum yearly insurable earnings calculated pursuant to section 136;
- (h) **“net income”** means net income calculated pursuant to section 139;
- (i) **“post-secondary institution”** means any educational institution that is not administered pursuant to *The Education Act, 1995*;
- (j) **“primary employment”** means primary employment as determined in the regulations;
- (k) **“relapse”** means the recurrence of a disabling condition directly related to an accident after an interval of improvement;
- (l) **“school year”** means:
 - (i) with respect to the elementary and secondary levels, the period commencing on July 1 of one year and ending on June 30 of the following year; or
 - (ii) with respect to the post-secondary level, the period commencing on September 1 of one year and ending on August 31 of the following year;
- (m) **“seasonal employment”** means recurring employment with periods of unemployment or lay-off over a 12-month period either:
 - (i) with one employer; or
 - (ii) at one type of employment;
- (n) **“secondary level”** means grade 9 of the Middle Level and grades 10, 11 and 12 of the Secondary Level as those levels are determined pursuant to *The Education Act, 1995*;
- (o) **“specialized equipment”** means prescribed specialized equipment;
- (p) **“student”** means an insured who, at the date of an accident:
 - (i) is under 16 years of age; or
 - (ii) attends an elementary, secondary or post-secondary educational institution on a full-time basis;

c. A-35

AUTOMOBILE ACCIDENT INSURANCE

(q) “**yearly employment income**”, with respect to an insured, means the yearly employment income of the insured that the insurer uses to determine benefits pursuant to Division 4.

2002, c.44, s.30; 2005, c.5, s.7.

DIVISION 2

Application of Part VIII and Bodily Injury Benefits**Application of Part**

101(1) Notwithstanding any other provision of this Part or any other Act or law but subject to sections 218 and 218.1, this Part applies only to accidents that occur on or after the date that this Part comes into force.

(1.1) This Part applies to any person who sustained bodily injury caused by a motor vehicle arising out of an accident on or after the date that this Part comes into force and who has not provided the insurer with a tort election in the manner prescribed by Part IV.

(1.2) A person who is entitled to benefits pursuant to this Part is not entitled to benefits pursuant to Part II other than a death benefit pursuant to Part II relating to the death of an insured.

(2) Notwithstanding subsection (1), this Part does not apply to a bodily injury caused by a motor vehicle arising out of an accident if the bodily injury:

- (a) is caused while the motor vehicle is not in motion;
- (b) subject to subsection (3), is caused:
 - (i) by, or by the use of, a device that can be operated independently of the motor vehicle and that is mounted on or attached to the motor vehicle;
 - (ii) by a self-propelled agricultural implement within the meaning of *The Traffic Safety Act*;
 - (iii) by a wheelchair as defined in *The Traffic Safety Act*;
 - (iv) by a special mobile machine as defined in *The Traffic Safety Act*;
 - (v) by a snowmobile as defined in *The Snowmobile Act*;
 - (vi) by an all terrain vehicle as defined in *The All Terrain Vehicles Act*;
 - or
 - (vii) by any other prescribed vehicle;
- (c) is caused by the autonomous act of an animal that is part of the motor vehicle's load;
- (d) is caused by an action performed by the insured in connection with the maintenance, repair, alteration or improvement of the motor vehicle;

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

- (e) is caused while putting a load on or taking a load off the motor vehicle;
or
 - (f) is caused as the result of a motor vehicle contest, show or race on a track or other location temporarily or permanently closed to all other vehicle traffic, whether or not the motor vehicle that caused the bodily injury is participating in the race, contest or show.
- (3) Clause (2)(b) does not apply if a motor vehicle in motion is involved in the accident.

2002, c.44, s.30 and 31; 2004, c.T-18.1, s.297;
2004, c.35, s.21.

102 Repealed. 2002, c.44, s.32.

Tort actions for economic loss

103(1) In this Part:

- (a) **“economic loss”** means the following losses resulting from bodily injury caused by a motor vehicle that arise out of an accident:
 - (i) in the case of an insured who is entitled to a benefit pursuant to Division 4:
 - (A) any past or future income loss suffered by the insured in excess of the yearly employment income attributable to the insured pursuant to Division 4; or
 - (B) if the insured receives a benefit pursuant to section 117, 118, 119 or 120, any past or future income loss suffered by the insured in excess of the benefit provided;
 - (ii) in the case of an insured who dies as a result of an accident, any past income loss or funeral expenses suffered by the insured’s surviving spouse or any dependant in excess of the benefits provided pursuant to Division 5;
 - (iii) in the case of an insured who is entitled to any benefit pursuant to Divisions 3 and 7, any past and future loss suffered by the insured in excess of the benefits to which the insured is entitled;
 - (iv) in the case of an insured who is entitled to compensation for loss of earnings pursuant to *The Workers’ Compensation Act, 2013* or any other Act, or any legislation of any other jurisdiction, that relates to the compensation of individuals injured in accidents:
 - (A) any past or future income loss suffered by the insured in excess of the benefits paid pursuant to section 37 of *The Workers’ Compensation Act, 2013*, section 207 of this Act or similar provisions in any other Act, or any legislation of any other jurisdiction, that relate to the compensation for income loss of individuals injured in accidents;

c. A-35

AUTOMOBILE ACCIDENT INSURANCE

(B) any past and future loss suffered by the insured's surviving spouse or dependant in excess of the benefits paid pursuant to sections 80, 81, 83, 85 and 86 of *The Workers' Compensation Act, 2013*, section 207 of this Act or similar provisions in any other Act, or any legislation of any other jurisdiction, that relate to the compensation of individuals for the death of an individual in an accident; or

(C) any past and future loss suffered by the insured in excess of the benefits paid pursuant to sections 103, 104, 109 and 111 of *The Workers' Compensation Act, 2013* or similar provisions in any other Act, or any legislation of any other jurisdiction, that relate to the compensation for medical aid of individuals injured in accidents;

(b) “**insured**” includes any prescribed person or class of prescribed persons.

(2) Notwithstanding section 40.1 of this Act, but subject to section 43 of *The Workers' Compensation Act, 2013*, an action may be brought in the Court of Queen's Bench to recover any damages of the insured or of the insured's surviving spouse or dependant for economic losses.

(3) The following rules apply in an action pursuant to this section:

(a) the rules of negligence and apportionment of liability apply;

(b) in determining economic loss pursuant to subclause (1)(a)(i) or paragraph (1)(a)(iv)(A), the court:

(i) shall calculate any award based on the insured's past or future income loss after deducting any applicable taxes pursuant to *The Income Tax Act, 2000* and the *Income Tax Act (Canada)*, any premiums pursuant to the *Employment Insurance Act (Canada)* and any contributions pursuant to the *Canada Pension Plan*; and

(ii) shall not award any amount for income loss for the first seven days after the accident;

(c) subject to clause (d), in determining an insured's or insured's surviving spouse's or dependant's economic loss, the court shall deduct from any award all amounts the insured or the surviving spouse or dependant has received or is entitled to receive from any government or agency of government, from any public or private insurance scheme or from any other scheme that lessens the economic loss;

(d) in determining economic loss pursuant to subclause (1)(a)(ii) or paragraph (1)(a)(iv)(B), the court shall not deduct from any award any amounts the insured's surviving spouse or dependant has received or is entitled to receive from a contract of life insurance as defined in *The Saskatchewan Insurance Act*.

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

- (4) The deductions mentioned in subclause (3)(b)(i) are to be calculated using the insured's total income at the date of the accident and not the portion of income representing the past or future income loss.
- (5) Notwithstanding any other Act or law, no government, agency of any government, public or private insurer or other person who is required or liable to pay an amount mentioned in clause (3)(c) has any right of subrogation to recover that amount.
- (6) In an action pursuant to this section, on the application of any party, the court may, in accordance with the regulations, direct that any compensation payable respecting all or any claimed categories of damages be provided for in the form of a structured compensation order.
- (7) The court may make a direction pursuant to subsection (6) at any stage in the proceedings.

2002, c.44, s.30; 2013, c.W-17.11, s.190.

Tort action for non-economic loss

104(1) In this section:

- (a) **“insured”** includes any prescribed person or class of persons;
- (b) **“non-economic loss”** means any non-pecuniary loss respecting, arising out of or stemming from bodily injury caused by a motor vehicle arising out of an accident less any benefits provided pursuant to this Part for permanent impairment to an insured who is bringing an action pursuant to this section to recover non-economic loss;
- (c) **“third party”** means:
- (i) a motor vehicle manufacturer;
 - (ii) a maker or supplier of motor vehicle parts;
 - (iii) a person engaged in the business of selling motor vehicles;
 - (iv) a person engaged in the business of or whose business includes a motor vehicle garage, repair shop or service station;
 - (v) the holder of a restaurant permit or a tavern permit issued pursuant to *The Alcohol Control Regulations, 1994* authorizing the permit holder to deal in beverage alcohol; or
 - (vi) any other prescribed person or member of a prescribed class of persons.
- (2) Notwithstanding section 40.1 of this Act, but subject to subsection (3) and section 43 of *The Workers' Compensation Act, 2013*, an insured who is entitled to a benefit pursuant to this Part may bring an action for damages in the Court of Queen's Bench to recover a non-economic loss:
- (a) against the operator of a motor vehicle if:
- (i) the loss is caused by a motor vehicle and, as a result of the operation of the motor vehicle, the operator is convicted of an offence pursuant to paragraph 253(a) or (b), subsection 254(5) or subsection 255(2) or (3) of the *Criminal Code*; or

c. A-35**AUTOMOBILE ACCIDENT INSURANCE**

- (ii) the loss is caused by a motor vehicle and:
 - (A) the operator of the motor vehicle intentionally caused or attempted to cause bodily injury to another person; and
 - (B) as a result of the operation of the motor vehicle, the operator is convicted of an offence pursuant to section 235, 236, 239, 249, 266, 267, 268 or 269 of the *Criminal Code*; or
- (b) subject to subsections (3) and (4) and to the regulations, against a third party if the loss is caused by, contributed to, or exacerbated by the acts or omissions of the third party.
- (3) For the purposes of clause (2)(b):
 - (a) a motor vehicle manufacturer is liable only with respect to its business activities and role in manufacturing motor vehicles;
 - (b) a maker or supplier of motor vehicle parts is liable only with respect to its business activities and role in making or supplying motor vehicle parts;
 - (c) a person engaged in the business of selling motor vehicles is liable only with respect to its business activities;
 - (d) a person engaged in the business of or whose business includes a motor vehicle garage, repair shop or service station is liable only with respect to its business activities and role in repairing and servicing motor vehicles; and
 - (e) the holder of a restaurant permit or tavern permit issued pursuant to *The Alcohol Control Regulations, 1994* authorizing the permit holder to deal in beverage alcohol is liable only with respect to its business activities and role in supplying beverage alcohol.
- (4) A third party is not liable pursuant to this section only by reason of the fact that a motor vehicle owned by the third party caused or contributed to the accident.
- (5) Notwithstanding any Act or law, an insured entitled to bring an action pursuant to subsection (2) is only entitled to recover that portion of his or her non-economic loss that is caused by or attributable to those operators or third parties identified in clauses (2)(a) and (b).
- (6) Notwithstanding *The Pre-Judgment Interest Act* or any other Act or law, the court shall not award any interest on that part of the judgment that represents a person's non-economic loss.

2002, c.44, s.30; 2004, c.35, s.22; 2013,
c.W-17.11, s.190.

Subrogation for non-economic loss

105(1) If the insurer makes a payment pursuant to section 104 with respect to a non-economic loss for damages or bodily injury, the insurer is subrogated to and deemed to be an assignee of the person to whom or on whose behalf or with respect to whom benefits or insurance money is to be paid or provided.

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

(2) The insurer may bring an action in its own name for recovery of the benefits or insurance money paid for the damages sustained.

(3) An action may be brought against any person at fault whether or not that person is a Saskatchewan resident.

2002, c.44, s.30.

Bodily injury benefits

106 Subject to this Part, the insurer shall pay benefits to a beneficiary regardless of who is responsible for the accident.

2002, c.44, s.30.

No benefits for suicide

107(1) No benefits are payable to the insured or insured's surviving spouse or dependant if the insured commits suicide or attempts to commit suicide with a motor vehicle.

(2) An insured or insured's surviving spouse or dependant who disagrees with a decision of the insurer pursuant to subsection (1) may appeal that decision to the Court of Queen's Bench or the appeal commission, in the prescribed manner, within 180 days after receiving the insurer's written decision.

2002, c.44, s.30.

No Part VIII benefits to occupants of stolen motor vehicles

107.1(1) Notwithstanding any other provision of this Act, no occupant of a stolen motor vehicle involved in an accident that occurs on or after the coming into force of this section, and no surviving spouse or dependant of the occupant of the stolen motor vehicle claiming through, on behalf of or as a dependant of the occupant of the stolen motor vehicle, is entitled to any benefits pursuant to this Part with respect to the accident.

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

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

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

c. A-35**AUTOMOBILE ACCIDENT INSURANCE**

(4) An insured or insured's surviving spouse or dependant who disagrees with a decision of the insurer pursuant to subsection (1) may appeal that decision to the Court of Queen's Bench or the appeal commission, in the prescribed manner, within 180 days after receiving the insurer's written decision.

2011, c.3, s.6.

Benefits for Saskatchewan residents and, if in a reciprocity agreement, for non-Saskatchewan residents

108(1) An insured who is resident in Saskatchewan at the date of the accident, and the insured's surviving spouse or dependant, are entitled to benefits if the accident occurs in Canada or the United States of America or on a vessel travelling between ports of those countries.

(2) An injured person who is not a resident of Saskatchewan and who is injured in Saskatchewan in a motor vehicle registered in Saskatchewan is deemed to be a resident of Saskatchewan, unless there is an agreement between the insurer and a government or agency of the government of the jurisdiction where the injured person resides that provides otherwise.

2004, c.35, s.23.

Benefits for non-residents

109(1) Subject to this Part, a person injured in an accident that occurs in Saskatchewan who is not resident in Saskatchewan, and any surviving spouse or dependant of that person, is entitled to benefits:

- (a) in accordance with any agreement between the insurer and a government or an agency of the government of the place of residence of the person injured; or
- (b) if no agreement exists, to the extent that the insurer determines that the person injured is not responsible for the accident.

(2) A person injured or any surviving spouse or dependant of that person who disagrees with a decision of the insurer pursuant to clause (1)(b) may appeal that decision to the Court of Queen's Bench or to the appeal commission, in the prescribed manner, within 180 days after receiving the insurer's written decision.

2002, c.44, s.30.

Right to carry on action outside Saskatchewan continued in certain circumstances

109.1 Subject to the insurer's right of subrogation, if an insured, an insured's surviving spouse or a dependant is entitled to any benefits respecting an accident that occurred outside Saskatchewan, the insured, insured's surviving spouse or dependant may exercise any right or remedy that he or she has pursuant to the law of the place where the accident occurred for compensation in excess of the benefits he or she is entitled to receive pursuant to this Part.

2004, c.35, s.24.

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

Accidents outside Saskatchewan

110 If an insured or insured's surviving spouse or dependant is entitled to benefits respecting an accident that occurred outside Saskatchewan, the insurer is subrogated to that insured's or insured's surviving spouse's or dependant's rights and is entitled to recover the amount of those benefits from:

- (a) any person who is not resident in Saskatchewan and who is responsible for the accident pursuant to the law of the place where the accident occurred; or
- (b) any other person who is liable to pay compensation for bodily injuries caused by a person described in clause (a).

2002, c.44, s.30.

Subrogation re accidents in Saskatchewan

111(1) Subject to section 105, if an insured or insured's surviving spouse or dependant is entitled to benefits pursuant to this Act respecting an accident, the insurer has the right to recover the amount of the benefits from:

- (a) any person who is not resident in Saskatchewan and who is responsible for the accident, to the extent that he or she is responsible for the accident; and
- (b) any other person who is liable to pay compensation for bodily injury caused by the person described in clause (a).

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

2002, c.44, s.30; 2004, c.L-16.1, s.34.

DIVISION 3
Rehabilitation

Rehabilitation

112(1) In this section, "**rehabilitation**" includes any or all of the following measures, programs and treatments that the insurer considers necessary or advisable to contribute to the rehabilitation of an insured, to lessen the insured's disability caused by the accident and to facilitate the insured's recovery from the accident:

- (a) physical and acquired brain injury programs and treatment;
- (b) occupational and vocational training and programs;

c. A-35**AUTOMOBILE ACCIDENT INSURANCE**

- (c) alterations to an insured's residence;
 - (d) modification or purchase of a motor vehicle for an insured;
 - (e) purchase of special equipment for an insured;
 - (f) any additional prescribed measure, program or treatment.
- (2) Subject to the regulations, the insurer may take any measure it considers necessary or advisable to contribute to the rehabilitation of an insured, to lessen a disability resulting from bodily injury and to facilitate the insured's recovery from the accident.
- (3) The total combined maximum benefits payable to an insured pursuant to this Division and Division 7 is \$5,000,000 for each accident in which a person suffers bodily injury.

2002, c.44, s.30.

DIVISION 4
Income Replacement Benefits

Income replacement benefit

113(1) This section does not apply to a student.

- (2) An insured is entitled to an income replacement benefit if, as a result of an accident, the insured:
- (a) is unable to continue an employment held by the insured at the date of the accident;
 - (b) is unable to hold an employment he or she would have held in the first 180-day period following the accident if the accident had not occurred; or
 - (c) is deprived of benefits pursuant to the *Employment Insurance Act* (Canada) or any other prescribed benefits to which he or she was entitled at the date of the accident.
- (3) The insurer shall calculate the income replacement benefit for the employment that the insured is unable to continue on the following basis:
- (a) if the insured holds employment in the employ of another, the yearly employment income of the insured calculated on the basis of the income the insured earned or would have earned from all employments the insured held or would have held but for the accident in the first 180-day period after the accident;

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

- (b) subject to the regulations, if the insured holds an employment as a self-employed earner, the greater of:
 - (i) the yearly employment income determined in accordance with the regulations for an employment of the same class as the primary employment the insured held or would have held but for the accident in the first 180-day period after the accident; and
 - (ii) the yearly employment income the insured earned or would have earned from all his or her employments held at the date of the accident; or
- (c) subject to the regulations, any benefits the insured would have received from the *Employment Insurance Act* (Canada) or any other prescribed benefits in the first 180-day period after the accident.
- (4) On and after the 181st day after the accident, an insured is entitled to an income replacement benefit if the insured is unable to hold employment he or she held or would have held but for the accident.
- (5) An income replacement benefit pursuant to subsection (4) is to be the greatest of:
 - (a) an income replacement benefit calculated on the basis of the yearly employment income attributed to the insured in the first 180-day period after the accident;
 - (b) an income replacement benefit calculated on the basis of the average employment income the insured earned in the two years before the accident as set out in the regulations, including any benefits received pursuant to the *Employment Insurance Act* (Canada), any benefits received under an employment disability plan, and any benefits received pursuant to *The Workers' Compensation Act, 2013* or similar provisions in any other Act, or any legislation of any other jurisdiction, that relate to the compensation of individuals injured in accidents; and
 - (c) an income replacement benefit calculated on the basis of a yearly employment income determined on the basis of a 40-hour work week paid on the basis of the minimum wage established pursuant to Part II of *The Saskatchewan Employment Act*.
- (6) Notwithstanding subsection (5), if the insured held or would have held a seasonal employment at the date of the accident, the income replacement benefit pursuant to subsection (4) is the greater of:
 - (a) an income replacement benefit calculated on the basis of the average employment income the insured earned in the two years before the accident as set out in the regulations, including any benefits received pursuant to the *Employment Insurance Act* (Canada), any benefits received pursuant to an employment disability plan, and any benefits received pursuant to *The Workers' Compensation Act, 2013* or similar provisions in any other Act, or any legislation of any other jurisdiction, that relate to the compensation of individuals injured in accidents; and
 - (b) an income replacement benefit calculated on the basis of a yearly employment income determined on the basis of a 40-hour work week paid on the basis of the minimum wage established pursuant to Part II of *The Saskatchewan Employment Act*.

c. A-35**AUTOMOBILE ACCIDENT INSURANCE**

(7) Notwithstanding subsections (5) and (6), if the insured held or would have held a seasonal employment at the date of the accident but the insured did not hold the employment held at the date of the accident in the two years before the accident, the income replacement benefit pursuant to subsection (4) is the greater of:

(a) the yearly employment income as determined in accordance with the regulations for an employment of the same class as the seasonal employment that the insured held or would have held but for the accident; and

(b) an income replacement benefit calculated on the basis of a yearly employment income determined on the basis of a 40-hour work week paid on the basis of the minimum wage established pursuant to Part II of *The Saskatchewan Employment Act*.

(8) Notwithstanding subsection (4), if on the 180th day and subsequent days following the accident the insured is entitled to an income replacement benefit for the first time:

(a) the insured is entitled to an income replacement benefit calculated in the manner set out in subsection (3); and

(b) the insured's income replacement benefit is not to be adjusted pursuant to subsection (4) until 180 days after the date the insured first became entitled to receive an income replacement benefit.

(9) An insured is not entitled to an income replacement benefit if the insured elects to obtain a caregiver benefit pursuant to section 119.

2002, c.44, s.30; 2013, c.W-17.11, s.189; 2013, c.S-15.1, s.10-15.

When more remunerative employment to be used

114 Subject to the regulations, if the insurer is satisfied that the insured held more remunerative employment in the year before the accident and would have held that more remunerative employment at the date of the accident but for special circumstances, the insurer shall calculate an insured's income replacement benefit pursuant to section 113 using the yearly employment income that the insured earned in the year before the accident, excluding any benefits paid to the insured pursuant to the *Employment Insurance Act* (Canada), as the insured's yearly employment income.

2002, c.44, s.30.

Income replacement benefit for catastrophic impairment

115(1) This section does not apply to a student.

(2) Notwithstanding any other provision of this Division, if an insured suffers a catastrophic injury as a result of the accident, the insured is entitled to the greater of:

(a) an income replacement benefit calculated in the manner set out in sections 113 and 114; and

(b) an income replacement benefit calculated on the basis of a yearly employment income equal to a yearly average computed on the basis of the industrial average wage for the 12 months before July 1 of the year preceding the accident.

2002, c.44, s.30.

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

Income replacement benefit for catastrophic injuries before August 1, 2002

115.1(1) In this section, “**former Act**” means this Act as it existed on July 31, 2002.

(2) This section does not apply to students.

(3) Notwithstanding any other provision of this Part or any other Act or law, if, on the date of the coming into force of this section, an individual is entitled to receive an income replacement benefit pursuant to Part VIII of the former Act, and the insured suffered a catastrophic injury as a result of the accident that created the entitlement to the income replacement benefit:

(a) the insurer, on the coming into force of this section, shall adjust the amount of the income replacement benefit to the greater of the following:

(i) the income replacement benefit the insured is receiving before the date of the coming into force of this section; and

(ii) an income replacement benefit calculated on the basis of a yearly employment income equal to a yearly average computed on the basis of the industrial average wage for the 12 months before July 1, 2004; and

(b) the individual is entitled to receive only the income replacement benefit mentioned in clause (a).

(4) The insurer shall adjust the income replacement benefit mentioned in subsection (3):

(a) if the income replacement benefit is one described in subclause (3)(a)(i), in accordance with Part VIII of the former Act; or

(b) if the income replacement benefit is one described in subclause (3)(a)(ii):

(i) on the first anniversary date of the accident that created the entitlement to the income replacement benefit pursuant to Part VIII of the former Act that occurs in the year after the year of the coming into force of this section and on every subsequent anniversary date of that accident; and

(ii) in accordance with this Part.

(5) An income replacement benefit payable pursuant to this section must be paid for as long as the insured is entitled to that benefit in accordance with the criteria set out in Part VIII of the former Act.

c. A-35**AUTOMOBILE ACCIDENT INSURANCE****SUBSTITUTE WORKER ELECTION****Substitute worker election**

116(1) Subject to the regulations, if an insured is self-employed at the date of an accident and is entitled to an income replacement benefit pursuant to section 113, 114, 122 or 123, the insured may elect to receive a benefit to hire a substitute worker.

(2) Subject to subsection (4), an insured may elect to receive a substitute worker benefit for each employment for which the insured would be considered self-employed.

(3) Subject to subsection (4), if an insured elects to receive a substitute worker benefit for an employment, the insured is not entitled to an income replacement benefit for that employment.

(4) Subject to subsection (5) and the regulations, the insured may, at any time:

(a) revoke an election to receive an income replacement benefit and elect to receive a substitute worker benefit; or

(b) revoke an election to receive a substitute worker benefit and elect to receive an income replacement benefit.

(5) An election to change benefits pursuant to subsection (4) may be made only once.

(6) Notwithstanding subsection (5), on the sale, lease, dissolution, termination or other disposition of the business operation carried on by the insured at the date of the accident:

(a) the insured's election to receive a substitute worker benefit is deemed to be revoked; and

(b) if the insured is otherwise entitled pursuant to this Part to receive an income replacement benefit, the insured is deemed to have elected to receive that income replacement benefit.

2002, c.44, s.30.

Substitute worker benefit

117(1) This section applies if an insured elects pursuant to section 116 to receive a substitute worker benefit to employ a person to perform the duties that the insured is unable to perform as a result of the accident.

(2) The maximum amount of the substitute worker benefit for all employments for which the insured would be considered self-employed at the date of the accident is \$631 per week.

(3) Notwithstanding subsection (2) but subject to subsection (4), instead of paying a substitute worker benefit weekly, the insurer shall pay the actual and reasonable expenses incurred by the insured to hire as many substitute workers as are necessary to perform the duties the insured would have performed but for the accident if, in the opinion of the insurer:

(a) the insured's employment has regular duties that are of a temporary nature that require the insured to work extended hours over a short term; or

(b) the insured's employment requires the use of specialized equipment or education.

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

- (4) The maximum benefit for a substitute worker benefit paid pursuant to subsection (3) is \$32,812 per year.
- (5) The insurer shall:
- (a) adjust the amount of the substitute worker benefit when the insured is able to resume some of the employment duties the insured carried out in the insured's employment at the date of the accident; and
 - (b) terminate the amount of the substitute worker benefit when the insured is substantially able to resume the employment duties the insured carried out in the insured's employment at the date of the accident.
- (6) In addition to a substitute worker benefit, the insurer shall reimburse the insured for any actual expenses required by law that the insured paid as the substitute worker's employer pursuant to the *Employment Insurance Act* (Canada) and the *Canada Pension Plan* on behalf of the substitute worker.
- (7) Notwithstanding any provision of this Part to the contrary, if an insured receives a substitute worker benefit:
- (a) the insurer shall reduce the substitute worker benefit in accordance with section 126 and, for that purpose, that section applies, with any necessary modification, to the substitute worker benefit; and
 - (b) the insurer shall:
 - (i) determine an employment for that insured pursuant to section 132 or 133, and those sections apply, with any necessary modification, to the insured; and
 - (ii) reduce the insured's benefit mentioned in subclause (i) in accordance with section 135, and that section applies, with any necessary modification, to the reduction of that benefit.

2002, c.44, s.30.

FAMILY ENTERPRISE BENEFITS

Family enterprise benefit

- 118(1)** An insured is entitled to a benefit pursuant to this section if the insured:
- (a) was working without remuneration in a family enterprise at the date of the accident; and
 - (b) is unable, because of the accident, to perform his or her regular duties in the family enterprise.
- (2) Subject to subsections (3) and (4), the amount of the benefit pursuant to this section is the amount required to hire a substitute worker to perform the duties of the insured during the period that the insured is unable to work in the family enterprise as a result of the accident.

c. A-35**AUTOMOBILE ACCIDENT INSURANCE**

- (3) The maximum amount of the family enterprise benefit for all duties carried out in a family enterprise is \$631 per week.
- (4) Notwithstanding subsection (3) but subject to subsection (5), instead of paying a family enterprise benefit weekly, the insurer shall pay the actual and reasonable expenses incurred by the insured to hire as many substitute workers as are necessary to perform the duties the insured would have performed but for the accident if, in the opinion of the insurer:
- (a) the insured has regular duties that are of a temporary nature that require the insured to work extended hours over a short term; or
 - (b) the insured's duties require the use of specialized equipment or education.
- (5) The maximum amount of a family enterprise benefit paid pursuant to subsection (4) is \$32,812 per year.
- (6) The insurer shall:
- (a) adjust the amount of the family enterprise benefit when the insured is able to resume some of the duties the insured carried out in the family enterprise at the date of the accident; and
 - (b) terminate the amount of the family enterprise benefit when the insured is substantially able to resume the duties the insured carried out in the family enterprise at the date of the accident.
- (7) In addition to a family enterprise benefit, the insurer shall reimburse the insured for any actual expenses required by law that the insured paid pursuant to the *Employment Insurance Act* (Canada) and the *Canada Pension Plan* on behalf of the substitute worker as that worker's employer.
- (8) At any time after the 180th day following the accident, an insured, other than a student, who is entitled to a family enterprise benefit may elect to receive an income replacement benefit pursuant to subsection 113(4).
- (9) Notwithstanding subsections (1) to (8), if an insured receives a family enterprise benefit:
- (a) the insurer shall reduce the family enterprise benefit in accordance with section 126 and, for that purpose, that section applies, with any necessary modification, to a family enterprise benefit; and
 - (b) the insurer shall:
 - (i) determine an employment for that insured pursuant to section 132 or 133, and those sections apply, with any necessary modification, to the insured; and
 - (ii) reduce the insured's family enterprise benefit mentioned in subclause (i) in accordance with section 135, and that section applies, with any necessary modification, to the reduction of the family enterprise benefit.

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

CAREGIVER BENEFITS

Caregiver benefits

119(1) An insured is entitled to receive a weekly benefit pursuant to this section if:

(a) the insured's main occupation at the date of the accident is caring for, without remuneration:

(i) persons who are under 16 years of age; or

(ii) persons who would qualify for a tax credit pursuant to section 118.3 of the *Income Tax Act* (Canada) for a mental or physical impairment; and

(b) as a result of the accident, the insured is unable to care for those persons.

(2) The insurer shall pay a benefit to reimburse the insured for actual and reasonable expenses incurred by an insured to assist the insured with the care of persons described in subsection (1) to a maximum amount of \$631 per week.

(3) On the 181st day after the accident, an insured who is receiving a weekly benefit pursuant to this section shall elect to:

(a) continue receiving the weekly benefit; or

(b) receive an income replacement benefit pursuant to subsection 113(4).

(4) Notwithstanding subsection (3), if an insured receiving a benefit pursuant to this section can prove that, but for the accident he or she would, at any point in time subsequent to the accident, no longer care for the persons described in subsection (1) and would have held an employment, the insurer shall:

(a) determine an employment for the insured; and

(b) pay the insured an income replacement benefit in accordance with the regulations.

(5) An insured is not entitled to receive a benefit pursuant to this section if:

(a) the insured elects to receive an income replacement benefit pursuant to subsection (3); or

(b) the insurer determines an employment for the insured pursuant to subsection (4) and pays an income replacement benefit pursuant to that subsection.

2002, c.44, s.30.

Other weekly benefits

120(1) Subject to subsection (3), an insured who is receiving a benefit pursuant to section 113, 114, 115, 117 or 118 or a student who is attending an educational institution on a full-time basis is entitled to a weekly benefit pursuant to this section if the insured becomes unable because of the accident to care for persons who, at the date of the accident:

(a) are under 16 years of age; or

(b) would qualify for a tax credit pursuant to section 118.3 of the *Income Tax Act* (Canada) for a mental or physical impairment.

c. A-35**AUTOMOBILE ACCIDENT INSURANCE**

(2) The insurer shall pay a benefit pursuant to this section to reimburse the insured for any actual and reasonable expenses incurred by the insured to provide for the care of persons described in subsection (1) to a maximum amount of \$316 per week.

(3) An insured is entitled to receive a weekly benefit pursuant to this section only if the insured's spouse is unable to care for the persons described in subsection (1) because of the spouse's:

- (a) illness;
- (b) disability;
- (c) work; or
- (d) studies outside the spousal residence.

2002, c.44, s.30.

STUDENTS**Loss of studies benefit**

121(1) A student who at the date of the accident is attending school on a full-time basis is entitled to a loss of studies benefit for the period the student is unable to begin or to continue his or her current studies because of the accident.

(2) The loss of studies benefit mentioned in subsection (1) is:

- (a) in the case of a student studying at the elementary level, \$4,011 for each school year not completed;
- (b) in the case of a student studying at the secondary level, \$3,726 for each semester not completed, to a maximum of \$7,451 per school year; and
- (c) in the case of a student studying at the post-secondary level, \$7,451 for each semester not completed, to a maximum of \$14,901 per school year.

(3) If the student is able to begin or continue a portion of his or her studies, the insurer shall pro-rate the loss of studies benefit set out in clauses (2)(a) to (c) to take into consideration those courses of study that the student was unable to complete as a result of the accident.

(4) For the purposes of this section, a student is considered to be attending school on a full-time basis if the student:

- (a) is registered in and admitted to a prescribed educational institution on a full-time basis;
- (b) is attending classes at the educational institution on a regular basis; and
- (c) has not abandoned his or her studies and has not been expelled from the educational institution.

2002, c.44, s.30.

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

Income replacement benefit - during studies

122(1) A student is entitled to an income replacement benefit if, as a result of the accident, and at any time before the completion of the student's current studies, the student is:

- (a) unable to continue to hold an employment held by the student;
- (b) unable to hold an employment the student would have held if the accident had not occurred; or
- (c) deprived of benefits pursuant to the *Employment Insurance Act* (Canada) or any other prescribed benefits to which he or she was entitled at the date of the accident.

(2) The insurer shall calculate the income replacement benefit pursuant to subsection (1) on the basis of:

- (a) the yearly employment income the student earned or would have earned from all of his or her employment if the student holds employment in the employ of another;
- (b) subject to the regulations, any benefits the student would have received after the accident from the *Employment Insurance Act* (Canada) or any other prescribed benefits; or
- (c) if the student holds employment as a self-employed earner, the greater of:
 - (i) the yearly employment income determined in accordance with the regulations for an employment of the same class as the student's primary employment held at the date of the accident; and
 - (ii) the yearly employment income the student earned or would have earned at the date of the accident from all employments that the student held but for the accident.

2002, c.44, s.30.

Income replacement benefit – after studies

123(1) If a student is unable because of an accident to hold an employment that the student's current studies would have allowed the student to hold, the student is entitled to an income replacement benefit pursuant to this section.

(2) The insurer shall pay the income replacement benefit pursuant to this section:

- (a) in the case of a student who, at the date of the accident, was under 16 years of age or studying at the elementary level, commencing on the day that the student reaches 16 years of age; and
- (b) in the case of a student who, at the date of the accident, is studying at the secondary level or post-secondary level, commencing on the day scheduled at the date of the accident for completion of the student's current studies.

c. A-35**AUTOMOBILE ACCIDENT INSURANCE**

(3) In the case of a student under 16 years of age or studying at the elementary or secondary level, the insurer shall calculate the income replacement benefit pursuant to this section:

(a) for the first year following a student's entitlement to an income replacement benefit, on the basis of a yearly employment income determined on the basis of a 40-hour work week paid on the basis of the minimum wage established pursuant to Part II of *The Saskatchewan Employment Act*; and

(b) for the period following the one-year period mentioned in clause (a), on the yearly employment income equal to a yearly average computed on the basis of the industrial average wage for the 12 months before the July 1 of the year for which the calculation is made.

(4) In the case of a student studying at the post-secondary level, the insurer shall calculate the income replacement benefit pursuant to this section on the basis of the yearly employment income equal to a yearly average computed on the basis of the industrial average wage for the 12 months before the July 1 of the year for which the calculation is made.

(5) Notwithstanding subsection (3), if a student suffers a catastrophic injury as a result of the accident, the insurer shall calculate the income replacement benefit pursuant to this section on the basis of a yearly employment income computed on the basis of the industrial average wage for the 12 months before the July 1 of the year for which the calculation is made.

2002, c.44, s.30; 2013, c.S-15.1, s.10-15.

Student entitled to one benefit only

124(1) If a student is entitled to a benefit pursuant to section 123, the student is entitled to the greatest benefit he or she is entitled to receive pursuant to section 117, 118, 120, 122 or 123.

(2) Notwithstanding any other provision of this Division, a student who, by virtue of subsection (1), is entitled to a benefit pursuant to one of the provisions mentioned in subsection (1) is entitled only to that benefit and not to the other benefits pursuant to the other provisions mentioned in that subsection.

2002, c.44, s.30.

Loss of scholarship, tuition, text books

125(1) A student who is unable, as a result of the accident, to begin or continue his or her current studies or a portion of his or her current studies is entitled to be reimbursed for the following:

(a) any non-refundable tuition fees;

(b) any expenses incurred for non-refundable text books; and

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

- (c) any lost scholarship income in excess of any money received for the expenses mentioned in clauses (a) and (b) that:
 - (i) would have assisted the student with the student's current studies; and
 - (ii) will not be available to the student at a later date should the student continue the student's current studies.
- (2) The maximum amount of the benefit pursuant to subsection (1) is \$14,901 per school year.

2002, c.44, s.30.

REDUCTION OF INCOME REPLACEMENT BENEFITS

Reduction if insured earns reduced income

126(1) Subject to subsections (2) to (4), the insurer shall reduce an insured's income replacement benefit if:

- (a) the insured earns a yearly employment income that is less than the yearly employment income used by the insurer to compute the insured's income replacement benefit;
 - (b) the insured is able to perform some of the insured's duties of employment; or
 - (c) in the case of an insured who was not employed at the date of the accident and had not displayed any intention of obtaining employment at the date of the accident, the insured is able to perform some of the activities of daily living.
- (2) For the purposes of subsection (1), the amount of the insured's reduced income replacement benefit is the amount RIRB calculated in accordance with the following formula:

$$\text{RIRB} = \text{IRB} - (90\% \times \text{NI})$$

where:

IRB is the income replacement benefit the insured is receiving pursuant to section 113, 114 or 115, subsection 119(4) or section 122 or 123; and

NI is the greater of:

- (a) the net income the insured earns from his or her employment; and
- (b) the income replacement benefit the insured is receiving pursuant to section 113, 114 or 115, subsection 119(4) or section 122 or 123 multiplied by the percentage that the insured is either able:
 - (i) to return to work; or
 - (ii) if applicable, to return to the activities of daily living.

c. A-35**AUTOMOBILE ACCIDENT INSURANCE**

(3) Notwithstanding subsection (2), if an insured held employment at the date of the accident, the insurer shall not reduce the insured's income replacement benefit pursuant to this section unless the insured is able to return to an employment.

(4) This section does not apply to an insured whose income replacement benefit is reduced pursuant to section 135.

2002, c.44, s.30.

Insureds near 65 years or older

127(1) In this section, "**income benefit**" means a benefit pursuant to section 113, 114, 115, 117 or 118, subsection 119(4) or section 122 or 123.

(2) This section applies only if an insured is 63 years of age or more and not more than 65 years of age at the date of the accident with respect to which an income benefit is payable.

(3) Notwithstanding any other provision of this Part, if an insured is entitled to receive an income benefit pursuant to this Division and, while that insured is receiving the income benefit, that person reaches 65 years of age, the insurer:

(a) shall not terminate or reduce that insured's income benefit solely on the grounds that the insured has reached 65 years of age; and

(b) unless the insurer is otherwise entitled pursuant to this Part or the regulations to terminate or reduce the insured's income benefit, shall pay the income benefit to the insured for a period of at least 24 consecutive months after the date the insured first became entitled to the income benefit.

(4) Notwithstanding any provision of this Part, an insured who is 65 years of age or older at the date of the accident is not entitled to income benefits unless that person was employed at the date of the accident.

(5) The insurer shall reduce an income benefit to an insured who is 65 years of age or older at the date of the accident:

(a) by 25% for the second year following the date of the accident;

(b) by 50% for the third year following the date of the accident; and

(c) by 75% for the fourth year following the date of the accident.

(6) An insured mentioned in subsection (5) ceases to be entitled to income benefits four years after the date of the accident.

2002, c.44, s.30.

Lump sum benefit

128(1) If an income replacement benefit or a substitute worker benefit is paid to an insured for the prescribed period, the insurer shall provide a lump sum benefit to the insured when:

(a) the insured reaches 65 years of age; or

(b) the insured's entitlement to an income replacement benefit or a substitute worker benefit is terminated.

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

(2) The insurer shall calculate the lump sum benefit pursuant to this section in accordance with the regulations.

(3) An insured is not entitled to a lump sum benefit pursuant to this section if the insured is 65 years of age or older at the date of the accident.

2002, c.44, s.30.

Reduction of benefit if partially capable

129 Notwithstanding any other provision of this Part, the insurer shall reduce an insured's income replacement benefit, a substitute worker benefit or a family enterprise benefit in accordance with the regulations if the insured was regularly incapable of holding full-time employment before the accident.

2002, c.44, s.30.

When benefit not payable

130 Notwithstanding any other provision of this Part, an insured is not entitled to an income replacement benefit, a substitute worker benefit or a family enterprise benefit if the insured was regularly incapable of holding employment before the accident.

2002, c.44, s.30.

TERMINATION OF DIVISION 4 BENEFITS

Termination of benefits

131(1) Notwithstanding any other provision of this Part, an insured ceases to be entitled to a benefit pursuant to this Division when any of the following occurs:

- (a) the insured is able to hold the last employment that he or she held before receiving a benefit;
- (b) in the case of an insured who was not employed at the date of the accident but who had displayed an intention of obtaining employment at the date of the accident, the insured is able to hold the employment he or she could have held at the date of the accident;
- (c) in the case of an insured who was not employed at the date of the accident and had not displayed any intention of obtaining employment at the date of the accident, the insured has substantially returned to the activities of daily living;
- (d) the insured is able to hold an employment determined for him or her pursuant to subsection 119(4);
- (e) the insured holds an employment from which the yearly employment income is equal to or greater than the yearly employment income on which the benefit is calculated;
- (f) subject to section 127, the insured is 65 years of age or older;
- (g) the insured does not make himself or herself available for employment;

c. A-35**AUTOMOBILE ACCIDENT INSURANCE**

- (h) the insured is able to hold an employment the insured held or would have held at the date of the accident but declines a bona fide offer of employment that, in the opinion of the insurer, the insured is capable of holding;
 - (i) the insured dies.
- (2) Notwithstanding clause (1)(a) or (d), an insured who lost his or her employment because of the accident is entitled to continue to receive an income replacement benefit commencing on the day the insured regains the ability to hold the employment and ending:
- (a) on the day the insured holds employment; or
 - (b) if the insured is unable to find employment, on the expiration of:
 - (i) 30 days, if the entitlement to the income replacement benefit lasted for at least 90 days and not more than 180 days;
 - (ii) 90 days, if the entitlement to the income replacement benefit lasted for more than 180 days and not more than one year;
 - (iii) 180 days, if the entitlement to the income replacement benefit lasted for more than one year and not more than two years; or
 - (iv) one year, if the entitlement to the income replacement benefit lasted for more than two years.
- (3) If an insured regains his or her ability to hold an employment he or she held or would have held before receiving an income replacement benefit, the insured is entitled to receive an income replacement benefit calculated on the basis of the benefits the insured would have obtained from the *Employment Insurance Act* (Canada) if:
- (a) as a result of seasonal demands, that employment is no longer available; and
 - (b) the insured:
 - (i) is not eligible to obtain benefits pursuant to the *Employment Insurance Act* (Canada) as a result of having received an income replacement benefit pursuant to this Division; and
 - (ii) continues to make himself or herself available for employment.
- (4) A benefit pursuant to subsection (3) is to be paid until whichever of the following occurs first:
- (a) the date that the insured's benefits pursuant to the *Employment Insurance Act* (Canada) would have expired;
 - (b) the date that the insured obtains employment.

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

RESIDUAL EMPLOYMENT DETERMINATION

Determined employment after second anniversary

132(1) This section does not apply to a student.

(2) Following the second anniversary of the accident, the insurer may determine an employment for an insured if the insured:

- (a) is able to work; but
- (b) is not able because of the accident to hold an employment from which the yearly employment income is equal to or greater than the yearly employment income on which an insured's income replacement benefit is calculated.

2002, c.44, s.30.

Determination of employment for students

133 The insurer may determine an employment for a student at any time from the scheduled day on which the student's current studies end if the student:

- (a) is able to work; but
- (b) is not able because of the accident to hold an employment from which the yearly employment income is equal to or greater than the yearly employment income that would have been paid to the student pursuant to section 123 if that section had applied to the student on the basis of the student being unable to hold employment because of the accident.

2002, c.44, s.30.

Factors in determining employment

134(1) In determining an employment pursuant to subsection 119(4) or section 132 or 133, the insurer shall consider the following factors, if applicable:

- (a) the education, training, work experience and physical and intellectual abilities of the insured at the time of the determination;
- (b) any knowledge or skill acquired by the insured in a rehabilitation program approved pursuant to this Part;
- (c) the insured's intended employment at the date of the accident;
- (d) whether the determined employment is available in the jurisdiction in which the insured resides;
- (e) whether the determined employment is available:
 - (i) on a regular and full-time basis; or
 - (ii) if it would not be possible for the insured to hold employment on a regular and full-time basis, on a part-time basis;
- (f) any other prescribed factors.

c. A-35**AUTOMOBILE ACCIDENT INSURANCE**

(2) Subject to clause (1)(e) and section 135, the income replacement benefit of an insured for whom an employment is determined pursuant to section 132 or 133 is not to be less than an income replacement benefit calculated on the basis of a yearly employment income determined on the basis of a 40-hour work week paid on the basis of the minimum wage established pursuant to Part II of *The Saskatchewan Employment Act*.

2002, c.44, s.30; 2013, c.S-15.1, s.10-15.

Reduction for determined employment

135(1) Subject to the other provisions of this Division, the insurer shall reduce an insured's income replacement benefit in accordance with subsection (2) if:

- (a) the insured holds or is able to hold an employment determined for the insured pursuant to section 132 or 133; or
- (b) one year has expired since an employment was determined for the insured pursuant to section 132 or 133.

(2) For the purposes of subsection (1), the amount of an insured's reduced income replacement benefit is the amount RIRB calculated in accordance with the following formula:

$$\text{RIRB} = \text{IRB} - \text{NI}$$

where:

IRB is the income replacement benefit the insured is receiving pursuant to section 113, 114 or 115, subsection 119(4) or section 122 or 123; and

NI is the income replacement benefit the insured would earn from an employment and calculated on the greater of:

- (a) the yearly employment income the insured actually earns from holding an employment; and
- (b) the yearly employment income determined in accordance with the regulations.

2002, c.44, s.30.

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

CALCULATION OF DIVISION 4 BENEFITS

Maximum yearly insurable earnings

136(1) The total amount of all benefits that an insured may receive pursuant to this Division is not to exceed the maximum yearly insurable earnings.

(2) The amount of the maximum yearly insurable earnings for 2002 and each year after 2002 is the amount MYIE calculated in accordance with the following formula:

$$\text{MYIE} = \$50,000 \times \frac{\text{IAWY}}{\text{IAW95}}$$

where:

IAWY is the average of the average industrial average wage for the 12 months before July 1 of the year before the year for which the maximum yearly insurable earnings are being calculated; and

IAW95 is the average of the industrial average wage for the 12 months before July 1, 1994.

(3) For the purposes of this section, the insurer shall use the most recent data available from Statistics Canada on October 1 of the year before the year for which the maximum yearly insurable earnings are being calculated.

2002, c.44, s.30.

Industrial average wage

137(1) Subject to subsections (2) and (3), the industrial average wage is the industrial aggregate average weekly earnings for all employees in Saskatchewan as published monthly by Statistics Canada.

(2) If no figure for the industrial aggregate average weekly earnings for all employees in Saskatchewan is published by Statistics Canada for a month, the insurer shall determine a figure for that month in accordance with the regulations.

(3) If, after the day this Part comes into force, Statistics Canada uses a new method to determine the industrial aggregate average weekly earnings for all employees for Saskatchewan for a particular month and the new method results in a change of more than 1% when compared with the former method, the insurer shall determine a figure in accordance with the regulations.

2002, c.44, s.30.

Limit on income replacement benefits

138 Subject to the other provisions of this Division, the amount of an income replacement benefit that an insured is entitled to is 90% of the insured's net income.

2002, c.44, s.30.

c. A-35**AUTOMOBILE ACCIDENT INSURANCE****Calculation of net income**

139 The amount of an insured's net income is the amount NI calculated in accordance with the following formula:

$$NI = YEI - D$$

where:

YEI is the lesser of:

- (a) the insured's yearly employment income; and
- (b) the maximum yearly insurable earnings; and

D is an amount calculated by the insurer in accordance with this section and the regulations for income tax pursuant to *The Income Tax Act, 2000* and the *Income Tax Act* (Canada), premiums pursuant to the *Employment Insurance Act* (Canada) and contributions pursuant to the *Canada Pension Plan*.

2002, c.44, s.30.

RELAPSE**Relapse within two years**

140(1) This section applies if an insured suffers a relapse of a bodily injury within two years after the later of:

- (a) the end of the last period for which the insured received a benefit pursuant to this Division, other than a benefit pursuant to section 126 or 135; and
- (b) the date of the accident, if the insured was not entitled to a benefit pursuant to this Division before the relapse.

(2) An insured who is unable to hold an employment held by the insured at the date of the relapse is entitled to a benefit pursuant to this Division.

(3) The insured is entitled to a benefit pursuant to subsection (2) from the date of the relapse.

(4) The insurer shall calculate the benefit pursuant to subsection (2) on the basis of the greater of:

- (a) the yearly employment income used by the insurer immediately before the end of the period mentioned in clause (1)(a); and
- (b) the yearly employment income of the insured at the date of the relapse.

(5) Notwithstanding subsection (4), if an insured suffers a relapse on or after the 180th day following the accident and before the relapse had not been receiving an income replacement benefit pursuant to subsection 113(4), (5), (6), (7) or (8), the insured is entitled to the greater of:

- (a) an income replacement benefit calculated on the basis of the yearly employment income of the insured at the date of the relapse; and

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

- (b) an income replacement benefit calculated in the manner set out in:
 - (i) subsection 113(5); or
 - (ii) if the insured held a seasonal employment, subsection 113(6) or (7) as the circumstances require.
- (6) If an insured receives an income replacement benefit at the date of relapse pursuant to clause (5)(a), the insurer shall adjust the insured's income pursuant to subsection 113(4) on the 180th day after the date of relapse

2002, c.44, s.30; 2004, c.35, s.25.

Relapse after two years or later

141(1) This section applies if an insured suffers a relapse of a bodily injury two years or more after the later of:

- (a) the end of the last period for which the insured received a benefit pursuant to this Division, other than an income replacement benefit pursuant to section 126 or 135; and
 - (b) the date of the accident, if the insured was not entitled to a benefit pursuant to this Division before the relapse.
- (2) An insured who is unable to hold an employment held by the insured at the date of the relapse is entitled to a benefit pursuant to this Division.
- (3) The insurer shall calculate a benefit pursuant to this section on the basis that the relapse is a second accident.

2002, c.44, s.30.

Limits on benefits

142 If an insured is receiving a benefit pursuant to this Division and subsequently becomes entitled to any other benefit pursuant to this Division on the basis of a relapse or a second accident:

- (a) the insured is entitled to receive the greater benefit; but
- (b) the insured is entitled to receive only one of those benefits.

2002, c.44, s.30.

c. A-35**AUTOMOBILE ACCIDENT INSURANCE****MEDICAL APPOINTMENTS****Medical appointments**

143(1) An insured is entitled to an income replacement benefit if, as a result of the accident, the insured is unavailable for work as a result of attending a medical appointment or treatment program authorized by the insurer.

(2) The insurer shall:

(a) calculate the income replacement benefit pursuant to this section on the basis of the yearly employment income the insured earns from his or her employment; and

(b) adjust the benefit calculated pursuant to clause (a) to take into consideration the number of hours of work missed.

(3) An insured is not entitled to an income replacement benefit pursuant to subsection (1) if the insured is currently receiving any of the following:

(a) an income replacement benefit pursuant to another provision of this Division;

(b) a caregiver benefit pursuant to section 119;

(c) a family enterprise benefit;

(d) a substitute worker benefit.

2002, c.44, s.30.

DIVISION 5
Death Benefits

Death benefits

144(1) Subject to subsections (2) to (6) and to the regulations, a surviving spouse is entitled to a weekly death benefit in an amount DB calculated in accordance with the following formula:

$$DB = (50\% \times IRB)$$

where IRB is the weekly income replacement benefit that an insured, other than a seasonal worker, would have been entitled to calculated on the basis of the greater of:

(a) the yearly employment income the insured earned or would have earned from all employments held at the date of the accident; and

(b) the yearly employment income the insured earned in the year before the accident excluding any benefits paid to the insured pursuant to the *Employment Insurance Act* (Canada) if the insurer is satisfied that the insured would have held a more remunerative employment at the date of the accident but for special circumstances.

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

(2) If the insured was a seasonal worker at the date of the accident, the surviving spouse of the insured is entitled to a weekly death benefit in an amount DB calculated in accordance with the following formula:

$$DB = (50\% \times IRB)$$

where IRB is the weekly income replacement benefit that the insured would have been entitled to calculated on the basis of the greater of:

(a) the yearly employment income the insured earned or would have earned from all employments held at the date of the accident as calculated in the manner set out in the regulations; and

(b) the average yearly employment income the insured earned in the two years before the accident as set out in the regulations, including any benefits paid to the insured pursuant to the *Employment Insurance Act* (Canada), any benefits received under an employment disability plan and any benefits the insured received pursuant to *The Workers' Compensation Act, 2013* or any similar provisions in any other Act, or any legislation of any other jurisdiction, that relate to the compensation of individuals injured in accidents.

(3) Notwithstanding subsection (2), if an insured held or would have held a seasonal employment at the date of the accident but the insured did not hold the employment held at the date of the accident in the two years before the accident, the yearly employment income to be used in clause (a) of the definition of IRB in subsection (2) is the yearly employment income as determined in accordance with the regulations for an employment of the same class as the seasonal employment that the insured held or would have held but for the accident.

(4) The minimum death benefit a surviving spouse is entitled to receive pursuant to this section is \$51,582.

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

(6) Subject to subsection (7), if at the date of the accident the insured has a dependant, the insurer shall pay a weekly death benefit for the care and maintenance of the insured's dependant in the amount B calculated in accordance with the following formula:

$$B = (5\% \times IRB) \times DC$$

where:

IRB is the income replacement benefit of the insured as calculated pursuant to subsection (1) or (2); and

DC is the number of the insured's dependants.

(7) The minimum weekly death benefit payable pursuant to subsection (6) must be not less than the weekly benefit set out in the regulations.

c. A-35**AUTOMOBILE ACCIDENT INSURANCE**

(8) The insurer shall pay the weekly death benefit set out in subsections (6) and (7) to the insured's surviving spouse.

(9) Notwithstanding subsection (8), the insurer may pay the weekly death benefit for the dependant to the Public Guardian and Trustee if:

- (a) the dependant does not reside with the surviving spouse; or
- (b) in the insurer's opinion, the surviving spouse has neglected or abandoned the dependant.

(10) Subject to subsection (11), the weekly death benefits mentioned in subsections (6) and (7) are payable until whichever of the following occurs first:

- (a) the dependant reaches 21 years of age;
- (b) the dependant dies.

(11) In the case of a person who is a dependant within the meaning of subclause 100(b)(ii), the dependant's weekly death benefits mentioned in subsections (6) and (7) are payable until whichever of the following occurs first:

- (a) the dependant dies;
- (b) the person is no longer considered a dependant within the meaning of subclause 100(b)(ii).

2002, c.44, s.30; 2013, c.W-17.11, s.189.

Death benefit – dependant

145(1) If both of a dependant's parents die in the same accident, the dependant is entitled to the death benefit mentioned in section 144 for each parent as if the dependant were the surviving spouse of each parent.

(2) If the insured is the sole parent of a dependant and dies as a result of an accident, the dependant is entitled to the death benefit mentioned in section 144 as if the dependant were the surviving spouse of the insured.

(3) If, at the date of the accident, the surviving parent of the insured's dependant is not entitled to the weekly death benefit set out in subsection 144(1), the dependant is entitled to the death benefit mentioned in section 144 as if the dependant were the surviving spouse of the insured.

(4) A death benefit mentioned in this section is payable until whichever of the following occurs first:

- (a) the dependant reaches 21 years of age; and
- (b) the dependant dies.

(5) Notwithstanding subsection (4), if a person is a dependant within the meaning of subclause 100(b)(ii), the insurer shall pay to the dependant the greater of:

- (a) the death benefit that would otherwise be payable pursuant to subsections (1) to (4); and
- (b) \$51,582.

(6) If there is more than one dependant, the death benefits mentioned in this section are to be paid in the prescribed manner.

2002, c.44, s.30.

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

Capitalization of death benefits

146(1) A surviving spouse or a dependant who is entitled to a death benefit pursuant to this Division may elect to have the benefit capitalized and, subject to the regulations, paid out as a lump sum.

(2) Subject to the regulations, an election pursuant to subsection (1) must be made within five years after the date of the death of the insured and is not revocable.

(3) The insurer shall undertake the capitalization in the prescribed manner.

(4) Notwithstanding subsections (1) and (3) but subject to subsection (5), if the insurer is required to pay a death benefit to a surviving spouse or a dependant pursuant to section 202, the insurer may elect not to capitalize the benefit.

(5) If a surviving spouse or a dependant waives his or her rights pursuant to section 202, the insurer shall pay that person a lump sum benefit of \$12,078 in lieu of any benefit that would otherwise be payable to that person pursuant to that section.

2002, c.44, s.30; 2004, c.35, s.26.

Lump sum death benefit

147(1) If an insured dies leaving no surviving spouse, dependant, parent or non-dependant child, the insured's estate is entitled to a lump sum benefit of \$11,462.

(2) Subject to subsections (3) and (4), if, on the day the insured dies, the insured has no surviving spouse or dependant but leaves a parent or non-dependant child, the insurer shall pay the sum of \$11,462 to each parent and non-dependant child.

(3) If five or more persons are entitled to a benefit pursuant to subsection (2), the total sum payable to all those persons is \$51,582 and that amount shall be divided equally among all persons entitled to the benefit.

(4) Notwithstanding subsection (2), if, on the day the insured dies, the insured was under 21 years of age and leaves no surviving spouse or dependant but leaves one or more parents, the insurer shall pay the sum of \$22,924 to the insured's estate.

(5) Notwithstanding any Act or law, if the insured, the insured's surviving spouse and the insured's dependant die from injuries sustained in the same accident, they are all deemed to have died at the same time and, for the purposes of determining the availability of benefits pursuant to this Division, there is deemed to be no surviving spouse or dependant.

2002, c.44, s.30.

Funeral benefit

148 The insured's estate is entitled to a lump sum benefit of \$7,500 for the insured's funeral.

2002, c.44, s.30.

Education benefit for surviving spouse

149(1) Subject to the regulations, the insurer may pay an education benefit to a surviving spouse who, at the date of the accident, was dependent on the insured.

c. A-35**AUTOMOBILE ACCIDENT INSURANCE**

(2) An education benefit mentioned in subsection (1) is to be used for the education of the surviving spouse.

(3) The maximum amount of an education benefit pursuant to this section is \$34,388.

2002, c.44, s.30.

Vocational counselling

150 Subject to the regulations, the insurer may pay a maximum benefit of \$500 to an insured's surviving spouse for vocational counselling.

2002, c.44, s.30.

Grief counselling

151 Subject to the regulations, the insurer may pay a maximum benefit of \$1,000 to the insured's family for grief counselling.

2002, c.44, s.30.

DIVISION 6**Permanent Impairment Benefits****Permanent impairment benefit**

152 Subject to this Division and the regulations, an insured who suffers a permanent impairment because of the accident is entitled to a lump sum benefit for the permanent impairment.

2002, c.44, s.30.

When beneficiary dies

153(1) Subject to subsection (2), a lump sum benefit pursuant to this Division is not payable if the insured dies of a cause related to the accident.

(2) If the insured dies of a cause unrelated to the accident and, on the date of his or her death, the insured is suffering a permanent impairment arising out of the accident, the insurer shall:

- (a) estimate the amount of the lump sum benefit that it would have awarded to the insured respecting the permanent impairment if the insured had not died; and
- (b) pay that lump sum benefit to the insured's estate.

2002, c.44, s.30.

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

Evaluation of permanent impairment

154(1) The insurer shall evaluate an insured's permanent impairment as a percentage that is determined on the basis of the prescribed schedule of permanent impairments.

(2) If an insured's permanent impairment is not listed on the prescribed schedule of permanent impairments, the insurer shall determine a percentage for the permanent impairment using the prescribed schedule as a guide.

2002, c.44, s.30.

Calculation of lump sum benefit

155(1) If an insured suffers a permanent impairment, the insurer shall calculate the lump sum benefit in the manner set out in this section.

(2) For the purposes of subsection (1), the amount of a lump sum benefit is the amount PI calculated in accordance with the following formula:

$$PI = \$143,282 \times P$$

where P is the percentage determined pursuant to section 154.

(3) Notwithstanding subsection (2), if the insured is determined to have suffered a permanent impairment that includes a catastrophic injury, the amount of the lump sum benefit for a permanent impairment payable pursuant to this Division is the amount CPI calculated in accordance with the following formula:

$$CPI = \$175,000 \times P$$

where P is the percentage determined pursuant to section 154.

(4) The minimum amount of a lump sum benefit for a permanent impairment pursuant to this section is \$573, and the maximum amount is:

- (a) \$143,282 for an insured who has suffered a permanent impairment; and
- (b) \$175,000 for an insured who has suffered a permanent impairment that includes a catastrophic injury.

2002, c.44, s.30.

DIVISION 7
Benefits for Expenses

Benefits for living assistance expenses

156(1) Subject to the regulations, if an insured is unable because of the accident to care for himself or herself or to perform the prescribed basic activities of daily living without assistance, the insurer shall pay a living assistance benefit to the insured for expenses related to obtaining assistance.

(2) The insurer shall calculate and reimburse the insured for the living assistance benefit in accordance with the regulations.

(3) The maximum amount of a living assistance benefit is \$947 per week.

2002, c.44, s.30.

c. A-35**AUTOMOBILE ACCIDENT INSURANCE****Benefits - other expenses**

157(1) Subject to the regulations, an insured is entitled to reimbursement for the following items:

- (a) medical and paramedical care, including transportation and lodging for the purpose of receiving the care;
 - (b) prostheses or orthopaedic devices;
 - (c) cleaning, repairing or replacing clothing that the insured was wearing at the date of the accident and that was damaged;
 - (d) any other prescribed expenses.
- (2) The amount of a benefit pursuant to this section is the amount of the expense that the insured is not entitled to be reimbursed for pursuant to any other Act.

2002, c.44, s.30.

Examination by practitioner

- 158(1)** If requested to do so by the insurer, an insured shall undergo an examination by a practitioner chosen by the insured.
- (2) If requested to do so by the insurer, an insured shall undergo an examination by a practitioner chosen by the insurer.
- (3) The insurer shall bear the expense of any examination made pursuant to this section.
- (4) A practitioner shall conduct an examination pursuant to this section in accordance with the regulations.
- (5) The insurer may request an examination pursuant to this section as often as it may reasonably require while a claim pursuant to this Part is pending.
- (6) In the case of the death of a claimant, the insurer may request any medical report that is prepared as a result of any autopsy conducted with respect to that death.

2002, c.44, s.30.

Transportation and lodging expenses

- 159(1)** An insured who undergoes an examination pursuant to section 158 is entitled to a benefit to reimburse his or her transportation, lodging and other expenses incurred in connection with the examination.
- (2) The insurer shall calculate the amount of a benefit pursuant to this section in accordance with the regulations.

2002, c.44, s.30.

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

Benefits for accompanying insured

160 If, in the opinion of the insurer, a person is required to accompany an insured because of an insured's physical or mental condition or age so that the insured can receive medical or paramedical care, the person accompanying the insured is entitled to be reimbursed for lost earnings, transportation and lodging costs and other associated prescribed expenses.

2002, c.44, s.30.

Additional expenses

161(1) In this section, “**non-refundable expense**” means an expense:

- (a) that an insured incurred before the accident for a service or benefit that, as a consequence of the accident, the insured is unable to use; and
 - (b) that is not refundable to the insured.
- (2) Subject to subsection (3), the insurer shall pay all actual and reasonable non-refundable expenses incurred by an insured.
- (3) The maximum benefit pursuant to this section is \$1,000.

2002, c.44, s.30.

Financial counselling

162(1) Subject to the regulations, the insurer may reimburse a beneficiary for authorized financial counselling if the beneficiary receives a lump sum payment in excess of the prescribed amount.

- (2) The maximum benefit pursuant to this section is \$1,000.

2002, c.44, s.30.

DIVISION 8
Claims

Application for benefits

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

2002, c.44, s.30.

Time limits for applying

164(1) Subject to subsections (2) to (5), a claimant must apply for a benefit:

- (a) within two years after the date of the accident on which the claim is based; or
 - (b) within two years after the date on which an observation of symptoms of a bodily injury is first made by a practitioner if those symptoms are not apparent immediately after the accident but are observed by the practitioner within two years after the date of the accident.
- (2) In the case of an application for a benefit based on the death of an insured, the claimant must apply within two years after the date of the insured's death.

c. A-35**AUTOMOBILE ACCIDENT INSURANCE**

(3) If a claimant is a minor on the date of the accident on which the claim is based, the claimant must apply for a benefit within two years after the date that the claimant reaches 18 years of age.

(4) The time limits set out in this section are postponed for a claimant who, by reason of mental disorder, is not competent to manage his or her estate until the claimant:

- (a) becomes competent to manage his or her estate; or
- (b) is represented by a personal guardian or property guardian appointed or continued pursuant to *The Public Guardian and Trustee Act* or *The Adult Guardianship and Co-decision-making Act* who is aware of a claim and has the legal capacity to make the claim on behalf of the claimant.

(5) The insurer may waive a time limit set out in this section if it is satisfied that the claimant had a reasonable excuse for failing to apply within the time limit.

2002, c.44, s.30.

Release of information

165(1) A claimant shall provide any information, and any authorization necessary to obtain that information, that is requested by the insurer for the purposes of this Part.

(2) The insurer shall, as soon as is practicable, release to a claimant, at the claimant's request, all of the insurer's information concerning the claimant and his or her claim that the claimant:

- (a) is entitled by law to receive; and
- (b) may reasonably require for the purposes of this Part.

2002, c.44, s.30.

Proof of salary

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

2002, c.44, s.30.

Report of examination

167(1) A practitioner who examines an insured at the request of the insurer pursuant to section 158 shall provide the insurer with a written report on the condition of the insured and on any other related matter requested by the insurer.

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

(2) If the insurer obtains a report respecting an examination conducted pursuant to section 158, the insurer, at the request of the insured who underwent the examination, shall provide a copy of the report to any practitioner designated by the insured.

2002, c.44, s.30.

Report of accident

168 Within six days after receiving a written request from the insurer, a practitioner who or hospital that is consulted by an insured or who or that treats an insured after the accident shall provide the insurer with a written report respecting:

- (a) the consultation or the treatment; and
- (b) any finding or recommendation relating to the consultation or treatment.

2002, c.44, s.30.

Reimbursement for costs of report

169 Subject to the regulations, an insured is entitled to reimbursement for his or her expenses in obtaining a report from a practitioner if:

- (a) the insured made an appeal pursuant to Division 11 and filed the report in support of the appeal; and
- (b) the appeal mentioned in clause (a) is allowed.

2002, c.44, s.30.

Claimant to advise of changes

170(1) Every claimant shall notify the insurer without delay of any changes that affect or that might affect:

- (a) his or her right to claim or receive a benefit; or
- (b) the amount of a benefit that he or she is claiming or receiving.

(2) For the purposes of subsection (1), a change includes, but is not limited to, a change in the claimant's medical condition.

2002, c.44, s.30.

Insurer to advise and assist claimants

171 The insurer shall advise and assist every claimant and shall endeavour to ensure that every claimant is informed of and receives the benefits to which the claimant is entitled.

2002, c.44, s.30.

c. A-35**AUTOMOBILE ACCIDENT INSURANCE****DIVISION 9
Payment of Benefits****Payment of benefits**

172(1) Subject to subsection (2), and notwithstanding any other provision in this Division, no insured is entitled to receive for the first seven days after the accident any of the following benefits:

- (a) an income replacement benefit;
- (b) a substitute worker benefit;
- (c) a family enterprise benefit.

(2) If an insured suffers a catastrophic injury, the insured is entitled to receive the benefits mentioned in subsection (1) from the first day after the accident.

(3) The insurer shall calculate the benefits payable pursuant to Divisions 3, 5 and 6 as of the date of the accident.

(4) The insurer shall pay the following benefits to the insured once every 14 days:

- (a) an income replacement benefit;
- (b) a substitute worker benefit;
- (c) a family enterprise benefit;
- (d) a benefit pursuant to section 119 or 120;
- (e) a living assistance benefit.

(5) The insurer shall pay a death benefit to a beneficiary once every 14 days subject to the beneficiary's election to obtain a lump sum benefit.

(6) The insurer may request that a beneficiary provide it with receipts before paying a benefit and, if the insurer makes that request, the beneficiary may receive the benefit only after receipts that are satisfactory to the insurer are submitted to the insurer.

2002, c.44, s.30.

When payment for catastrophic injury may be made

173(1) If the nature of an insured's bodily injury prevents the insurer from determining if the insured suffered a catastrophic injury at the date of the accident, the insurer is not obligated to pay the insured benefits pursuant to this Part on the basis of a catastrophic injury until the medical information indicates that the insured suffered a catastrophic injury.

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

(2) When the medical information indicates that an insured suffered a catastrophic injury, the insurer shall, if applicable:

- (a) pay benefits to the insured on the basis of a catastrophic injury; and
- (b) pay to the insured any additional benefit that would have been paid to him or her as if the catastrophic injury assessment was made at the date of the accident together with interest pursuant to section 210.

2002, c.44, s.30.

When Division 4 benefits not payable

174(1) Notwithstanding any other provision of this Part, no insured is entitled to any benefit pursuant to Division 4 for any period that the insured is serving a sentence of imprisonment.

(2) If an insured mentioned in subsection (1) is acquitted of the offence for which the imprisonment was served, the insurer shall pay to the insured the amount of the benefit that would have been paid to him or her if he or she had not been imprisoned, together with interest pursuant to section 210, from the day the benefit was suspended until the day of payment.

(3) Notwithstanding any other provision of this Part, an insured is not entitled to any benefit pursuant to Division 4, except benefits pursuant to sections 119 and 120, in the following circumstances:

- (a) the insured is more than 50% responsible for the accident; and
- (b) the insured:
 - (i) has been convicted:
 - (A) of an offence pursuant to paragraph 253(a) or (b), subsection 254(5) or subsection 255(2) or (3) of the *Criminal Code*; or
 - (B) of an offence pursuant to a law of a state of the United States of America substantially similar to an offence mentioned in paragraph (A);

and, on at least one other occasion within the five years before the accident, has been convicted of an offence listed in this subclause as a result of the operation of a motor vehicle; or

- (ii) was the operator of a motor vehicle who:
 - (A) intentionally caused or attempted to cause bodily injury to another person; and
 - (B) has been convicted of:
 - (I) an offence set out in section 235, 236, 239, 249, 266, 267, 268 or 269 of the *Criminal Code* as a result of the operation of a motor vehicle; or
 - (II) an offence pursuant to a law of a state of the United States of America substantially similar to an offence mentioned in subparagraph (I).

2002, c.44, s.30.

c. A-35**AUTOMOBILE ACCIDENT INSURANCE****When permanent impairment benefits not payable**

175 Notwithstanding any other provision of this Part, an insured is not entitled to any lump sum benefit for a permanent impairment pursuant to Division 6 to which the insured would otherwise be entitled if:

- (a) the insured is more than 50% responsible for the accident; and
- (b) the insured:
 - (i) at the time of the accident:
 - (A) was the operator or had the care and control of a motor vehicle involved in the accident; and
 - (B) was under the influence of alcohol or drugs to such an extent that the insured was incapable for the time being of having proper control of the motor vehicle;
 - (ii) was convicted, with respect to the accident, of:
 - (A) an offence pursuant to paragraph 253(a) or (b), subsection 254(5) or subsection 255(2) or (3) of the *Criminal Code*; or
 - (B) of an offence pursuant to a law of a state of the United States of America substantially similar to an offence mentioned in paragraph (A); or
 - (iii) at the time of the accident, was the operator of a motor vehicle who:
 - (A) intentionally caused or attempted to cause bodily injury to another person; and
 - (B) is convicted of:
 - (I) an offence set out in section 235, 236, 239, 249, 266, 267, 268 or 269 of the *Criminal Code* as a result of the operation of a motor vehicle; or
 - (II) an offence pursuant to a law of a state of the United States of America substantially similar to an offence mentioned in subparagraph (I).

2002, c.44, s.30; 2015, c.28, s.20.

Proof of conviction

176 For the purposes of sections 174 and 175, a certificate purporting to be signed by a judge of the convicting court or other officer having custody of the records of the convicting court certifying that the insured has been convicted of an offence mentioned in section 174 or 175 is admissible in evidence as proof, in the absence of evidence to the contrary, of the conviction of the insured without proof of the handwriting or position of the person purporting to have signed the certificate.

2002, c.44, s.30.

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

Beneficiary may appeal decision of insurer

177 A claimant who disagrees with a determination of the insurer pursuant to section 174 or 175 may appeal the determination to the Court of Queen's Bench or the appeal commission, in the prescribed manner, within 180 days after receiving written notice of the insurer's determination.

2002, c.44, s.30.

Payment of loss of studies benefits

178 The insurer shall pay a loss of studies benefit payable pursuant to section 121 to the student at the end of the semester or school year, as the case may be, that the student did not complete.

2002, c.44, s.30.

To whom benefits to reimburse expenses may be paid

179 The insurer shall pay a benefit related to reimbursing expenses pursuant to Division 3 or 7 to the beneficiary.

2002, c.44, s.30.

Payment to estate

180 If a benefit is payable to a beneficiary but not paid on or before the day he or she dies, the insurer shall pay the benefit to the beneficiary's estate.

2002, c.44, s.30.

Payment to guardians

181(1) If a beneficiary who is entitled to a benefit has a personal guardian or property guardian appointed or continued pursuant to *The Public Guardian and Trustee Act* or *The Adult Guardianship and Co-decision-making Act* who is authorized to receive the payment, the insurer shall pay the benefit to the personal guardian or property guardian.

(2) Notwithstanding any provision of this Part, the insurer may at any time elect to pay a benefit to the Public Guardian and Trustee if the Public Guardian and Trustee is authorized by law to accept the payment.

2002, c.44, s.30.

Benefits, other than income replacement benefits, not subject to seizure or assignment

182(1) Subject to sections 11.1 and 202, the regulations and *The Enforcement of Maintenance Orders Act, 1997*, benefits, other than income replacement benefits, are exempt from seizure, attachment, execution and any other process or claim.

(2) A beneficiary who is entitled to any benefits, other than income replacement benefits, may not assign the benefits to another person, and any purported assignment is null and void.

2002, c.44, s.30; 2012, c.14, s.2.

c. A-35**AUTOMOBILE ACCIDENT INSURANCE****When insurer may refuse to pay or may reduce, suspend or terminate benefits**

183 The insurer may refuse to pay a benefit to a beneficiary or may reduce the amount of a benefit or suspend or terminate the benefit if the beneficiary:

- (a) knowingly provides false or inaccurate information to the insurer;
- (b) refuses or neglects to produce information required by the insurer for the purposes of this Part or to provide an authorization reasonably required by the insurer to obtain the information;
- (c) without valid reason, refuses to return to his or her former employment, leaves an employment that he or she could continue to hold, or refuses a new employment;
- (d) without valid reason, neglects or refuses to undergo an examination by a practitioner, or interferes with an examination by a practitioner, requested or required by the insurer;
- (e) without valid reason, refuses, does not follow or is not available for treatment recommended by a practitioner and the insurer;
- (f) without valid reason, prevents or delays recovery by his or her activities;
- (g) without valid reason, does not follow or participate in a rehabilitation program; or
- (h) prevents or obstructs the insurer from exercising any of its rights of recovery or subrogation pursuant to this Part.

2002, c.44, s.30.

DIVISION 10**Indexation of Benefits****Interpretation of division**

184(1) In this Division, “**consumer price index**” means the consumer price index mentioned in subsections (2) to (4).

(2) Subject to subsections (3) and (4), in this Division, the consumer price index is the ‘all-items’ Consumer Price Index for Saskatchewan as published monthly by Statistics Canada.

(3) If no figure for the “all-items” Consumer Price Index for Saskatchewan is published by Statistics Canada for a month, the insurer shall determine a figure for that month in accordance with the regulations.

(4) If, after the day this Part comes into force, Statistics Canada uses a new method to determine the “all-items” Consumer Price Index for Saskatchewan for a particular month and the new method results in a change of more than 1% when compared with the former method, the insurer shall determine a figure in accordance with the regulations.

2002, c.44, s.30.

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

Timing of required adjustments

185(1) Subject to subsection (2), the insurer shall adjust the amount of the yearly employment income on the anniversary date of the accident for the purposes of recalculating an insured's net income pursuant to section 139.

(2) On January 1 of each year, the insurer shall adjust the amounts set out in this Part, other than the maximum yearly insurable earnings set out in section 136.

(3) The amounts as adjusted pursuant to subsection (2) must be applied in calculating the amount of any benefit.

2002, c.44, s.30.

Calculation of adjustment

186(1) Subject to section 187, if an amount is to be adjusted pursuant to this Division, the adjusted amount is the amount AM calculated in accordance with the following formula:

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

where:

A is the amount to be adjusted;

CPICY is the consumer price index for the year in which the adjustment is being made; and

CPIPY is the consumer price index for the previous year.

(2) For the purposes of this section, the consumer price index for a year is the average of the consumer price indices for the 12 months before October 1 of the previous year.

(3) If the average of the monthly consumer price indices for a year includes more than one decimal, only the first digit is to be retained, and it is to be increased by one unit if the second digit is greater than four.

(4) If the ratio between the consumer price index for the current year and the consumer price index for the previous year includes more than three decimals, only the first three digits are to be retained, and the third digit is to be increased by one unit if the fourth digit is greater than four.

(5) After adjusting pursuant to this section, the insurer shall round the resulting amount to the nearest dollar.

2002, c.44, s.30.

c. A-35**AUTOMOBILE ACCIDENT INSURANCE****Cap on adjustments**

187(1) Subject to subsection (2), if the ratio between the consumer price index for the current year and the consumer price index for the previous year exceeds 1.06:1, the ratio is deemed to be 1.06:1.

(2) When authorized by the regulations, the insurer may use the ratio calculated pursuant to section 186 even though the ratio between the consumer price index for the current year and the consumer price index for the previous year exceeds 1.06:1.

2002, c.44, s.30.

DIVISION 11**Insurer's Decisions and Appeals****Insurer's decisions final**

188 Notwithstanding any other Act or law, any decision made or action taken by the insurer pursuant to this Part is final and conclusive and may be reviewed only in accordance with this Division.

2002, c.44, s.30.

Insurer to give written reasons

189(1) The insurer shall give every claimant a written decision respecting the claimant's entitlement to benefits.

(2) At the time the insurer sends a claimant a written decision, it shall give the claimant:

- (a) written reasons for the decision; and
- (b) written notice of the claimant's right to ask for mediation or to appeal the insurer's decision pursuant to this Division.

2002, c.44, s.30.

Mediation

190(1) If a claimant wishes to mediate his or her claim for benefits, the claimant shall provide the insurer with a written notice requesting mediation.

(2) A claimant shall:

- (a) provide the written notice mentioned in subsection (1) to the insurer within 90 days after the date the claimant received the insurer's written decision pursuant to section 189;
- (b) set out in the written notice the matters that the claimant wishes to mediate; and
- (c) pay any prescribed fee.

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

- (3) Subject to this section, mediation is to be conducted in the prescribed manner.
- (4) The parties shall agree on the appointment of a mediator within 30 days after the insurer receives a written request for mediation.
- (5) If the parties are unable to agree on a mediator within the period mentioned in subsection (4), a mediator must be appointed in the prescribed manner.
- (6) A mediator appointed pursuant to this section shall endeavour to assist the parties to resolve the issues that are the subject of the mediation.
- (7) Except with the written consent of the mediator and all parties to an action who participated in the mediation, the following are not admissible as evidence in any appeal:
 - (a) evidence arising from anything said in the course of the mediation;
 - (b) anything said in the course of the mediation;
 - (c) any oral or written admission or communication made in the course of the mediation.
- (8) When the mediator determines that the mediation is completed, the mediator shall provide each party with a written statement declaring that the mediation is completed.

2002, c.44, s.30.

Right to appeal

- 191(1)** A claimant may appeal a decision of the insurer pursuant to this Part to either the Court of Queen's Bench or the appeal commission within the later of:
- (a) 90 days after the date of insurer's written decision; and
 - (b) if a claimant has requested mediation pursuant to section 190, 60 days after the date the mediator's written statement pursuant to subsection 190(8) declaring that the mediation is completed.
- (2) If a claimant appeals a decision of the insurer to:
- (a) the Court of Queen's Bench, no proceeding respecting the matter may be taken before the appeal commission; or
 - (b) the appeal commission, no action or proceeding respecting the matter may be taken before the Court of Queen's Bench.

2002, c.44, s.30.

c. A-35**AUTOMOBILE ACCIDENT INSURANCE****Court rules apply to proceeding before the court**

192(1) An appeal to the Court of Queen's Bench is to be conducted in accordance with *The Queen's Bench Rules* respecting actions commenced by statement of claim.

(2) If the insurer is obligated to pay a claimant's bill of fees and disbursements in an appeal pursuant to this section, the insurer is deemed to be a person charged with the bill and may apply for taxation of the claimant's bill of fees to a taxing officer in the same manner as costs pursuant to *The Queen's Bench Rules* or *The Legal Profession Act, 1990*.

2002, c.44, s.30.

Conduct of appeal before appeal commission

193(1) This section applies to appeals before the appeal commission.

(2) A claimant may commence an appeal to the appeal commission in the prescribed manner.

(3) Subject to *The Fee Waiver Act*, a claimant who commences an appeal to the appeal commission must pay any prescribed fee.

(4) Subject to this section, an appeal to the appeal commission is to be conducted in the prescribed manner.

(5) Unless the claimant puts them in issue, the insurer's finding of facts must be adopted on appeal.

(6) If the claimant puts the insurer's finding of facts in issue, the appeal commission may hold a hearing to determine the facts.

(7) On an appeal, the appeal commission may:

(a) set aside, confirm or vary the insurer's decision; or

(b) make any decision that the insurer is authorized to make pursuant to this Part.

(8) The appeal commission shall provide the claimant and the insurer with written reasons for its decision.

(9) If the appeal commission determines that the insurer should have paid the claimant benefits other than those which the insurer has been paying, the appeal commission may award interest on the value of the benefits not paid from the date when those benefits should have been paid until the date of the appeal commission's decision at the rate prescribed in section 210.

(10) A decision of the appeal commission is binding on the insurer and the claimant and may not be appealed except in accordance with this Division.

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

(11) Subject to the regulations, the insurer shall reimburse a claimant who is successful on appeal pursuant to this section or section 194 for the claimant's costs in the prescribed amount.

(12) If the insurer is obligated to pay a claimant's bill of fees and disbursements in an appeal pursuant to this section, the insurer is deemed to be a person charged with the bill and may apply for taxation of the claimant's bill of fees to a taxing officer in the same manner as costs pursuant to *The Queen's Bench Rules* or *The Legal Profession Act, 1990*.

2002, c.44, s.30; 2015, c.F-13.1001, s.12.

Appeal to the Court of Appeal

194(1) The insurer or the claimant may appeal a decision of the Court of Queen's Bench or appeal commission to the Court of Appeal on a question of law only.

(2) An appeal pursuant to this section must be made within 30 days after the date of the decision of the Court of Queen's Bench or appeal commission or within any further time that a judge of the Court of Appeal may allow.

2002, c.44, s.30.

Variation of compensation

195(1) A decision of the Court of Queen's Bench or the appeal commission made pursuant to section 191 or 193 may, at any time, be varied on the application of either the claimant or the insurer.

(2) A party who wishes to have a decision varied shall apply for leave to make an application for a variation to the Court of Queen's Bench or the appeal commission:

(a) by serving on the other party a copy of the application in the prescribed form; and

(b) by filing the application mentioned in clause (a), together with proof of service, with the Court of Queen's Bench or the appeal commission, whichever originally decided the matter.

(3) If the Court of Queen's Bench or the appeal commission is of the opinion that the claimant has established a prima facie case that there has been a material change in the claimant's circumstances, the Court of Queen's Bench or the appeal commission may grant leave to make an application for a variation.

(4) The provisions of section 192 or 193, as the case may be, apply, with any necessary modification, to an application for a variation pursuant to this section.

2002, c.44, s.30.

Dismissal of appeal for want of prosecution of appeal

195.1(1) Subject to subsection (2), if an appeal before the appeal commission is not set down for hearing within six months after the application for appeal has been filed, the appeal commission may dismiss the appeal as abandoned.

c. A-35**AUTOMOBILE ACCIDENT INSURANCE**

(2) Before dismissing an appeal pursuant to subsection (1), the appeal commission shall notify the parties in writing that the appeal shall be dismissed unless the parties within 15 days after the date the notice is served on the parties apply to the appeal commission to show cause why the appeal should not be dismissed.

(3) If an appeal has been dismissed by the appeal commission pursuant to this section, any money paid by the claimant to initiate the appeal shall be refunded.

2004, c.35, s.27.

Appeal does not stay decision

196 An appeal pursuant to this Division respecting a benefit does not stay or affect the validity of the insurer's decision respecting the payment of a benefit.

2002, c.44, s.30.

DIVISION 11.1**Appeal Commission****Appeal commission established**

196.1(1) The Automobile Injury Appeal Commission is established.

(2) The appeal commission consists of those persons appointed as members by the Lieutenant Governor in Council.

(3) A member of the appeal commission holds office at pleasure for a term not exceeding three years and until a successor is appointed.

(4) The Lieutenant Governor in Council may designate:

- (a) one member of the appeal commission as chairperson; and
- (b) one member of the appeal commission as vice-chairperson.

(5) The chairperson shall perform the responsibilities imposed on, and may exercise the powers given to, the chairperson by the Lieutenant Governor in Council, this Act and the regulations.

(6) If the chairperson is absent or unable to act for any reason or if the position of chairperson is vacant, the vice-chairperson shall act as chairperson and, while so acting, shall perform all the responsibilities imposed on, and may exercise all the powers given to, the chairperson.

(7) If, in the circumstances mentioned in subsection (6), the vice-chairperson is absent or unable to act for any reason or if the position of vice-chairperson is vacant, another member of the commission may act as chairperson and, while so acting, shall perform all the responsibilities imposed on, and may exercise all the powers given to, the chairperson.

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

(8) The appeal commission shall fulfil any responsibilities imposed on, and may exercise any powers given to, the appeal commission by the Lieutenant Governor in Council, this Act and the regulations.

(9) In addition to any powers given to the appeal commission by the Lieutenant Governor in Council, this Act and the regulations, the appeal commission may exercise any other powers that it considers necessary or incidental to carry out the intent of this Part.

2002, c.44, s.30.

Panels of appeal commission

196.2(1) One or more members of the appeal commission may sit as a panel of the appeal commission and may exercise and perform any powers or duties that the appeal commission is authorized to exercise or perform.

(2) Any number of panels may sit concurrently.

(3) The chairperson shall determine the number of members necessary to constitute a quorum for each appeal.

(4) If only one member of the panel is required to hear a matter, a decision or action of that member is a decision of the appeal commission.

(5) If more than one member of the appeal commission are required to hear a matter, a decision or action of a majority of the members of the panel is a decision of the appeal commission.

(6) In the case of a tie vote, the vote is deemed to be decided in favour of the claimant.

(7) The appeal commission may:

(a) meet at those times and at those places that the chairperson may designate; and

(b) conduct its proceedings in any manner that it considers advisable.

2002, c.44, s.30.

Evidence

196.3(1) In the case of a hearing or review before the appeal commission, the appeal commission may receive any evidence that, in the opinion of the appeal commission, is relevant to the matter being heard or reviewed.

(2) The appeal commission is not bound by rules of law concerning evidence.

(3) In conducting a hearing or review, each member of the appeal commission has the powers conferred on a commission by sections 11 and 15 of *The Public Inquiries Act, 2013*.

(4) The appeal commission shall keep any records that it considers necessary for the proper conduct of its business.

2002, c.44, s.30; 2013, c.27, s.5.

c. A-35**AUTOMOBILE ACCIDENT INSURANCE****Rules respecting hearings**

196.4(1) Subject to the regulations, the appeal commission may make rules:

- (a) governing the management and conduct of its business and the conduct of the meetings, hearings, reviews and any other proceedings of the appeal commission; and
 - (b) respecting forms, applications and other documents required to be used and the procedures to be followed in the conduct of its affairs.
- (2) The appeal commission shall cause its rules respecting hearings that are made pursuant to subsection (1) to be published in the Gazette.
- (3) If the requirements of this Act, the regulations and the rules of the appeal commission have been substantially complied with, no order or decision of the appeal commission is to be set aside by reason only of a defect, error, omission or irregularity in any matter associated with a proceeding before the appeal commission.

2002, c.44, s.30.

Remuneration and employees

196.5(1) The members of the appeal commission are entitled to be paid any remuneration for performing their responsibilities that may be fixed by the Lieutenant Governor in Council.

(2) The appeal commission may:

- (a) employ, engage the services of or retain any officers or other employees that are required for the proper conduct of its business; and
- (b) determine the duties, powers, conditions of employment and remuneration of officers and employees mentioned in clause (a).

(3) The appeal commission may:

- (a) engage the services of any legal counsel, consultant or technical adviser that it considers appropriate to assist the appeal commission in carrying out its responsibilities; and
- (b) pay any fees and expenses that it considers appropriate to the legal counsel, consultants and technical advisers engaged pursuant to clause (a).

2002, c.44, s.30.

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

DIVISION 12
Recovery of Benefits

Overpayment

197(1) The following payments are overpayments pursuant to this Part:

- (a) a benefit payment made under a mistake of fact or as a result of an error on behalf of the insurer that is in excess of a benefit to which the person is entitled or that provides the person with a benefit the person is not otherwise entitled to receive;
 - (b) a benefit payment made to a person who prevents or obstructs the insurer from exercising any of its rights of subrogation pursuant to this Part;
 - (c) any benefit obtained by fraud.
- (2) A person who has received an overpayment pursuant to this Part shall repay the amount of the overpayment to the insurer.
- (3) An overpayment pursuant to this Part is a debt due to the insurer, and the insurer may recover an overpayment:
- (a) by deducting the amount of the overpayment from any other payments that the insurer owes to that person; and
 - (b) by any other means allowed by law.

2002, c.44, s.30.

Time limits for recovery

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

- (a) the day on which the amount of the overpayment was paid to the person;
- (b) if the amount of the overpayment was paid as a result of fraud, the day on which the fraud is first known or discovered by the insurer; or
- (c) if the person to whom the benefits were paid has prevented or obstructed the insurer from exercising its rights of subrogation, the day on which the insurer knows about or first discovers an act or omission of that person relating to the prevention or obstruction.

2004, c.L-16.1, s.34.

Cancellation of overpayment

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

2002, c.44, s.30.

c. A-35**AUTOMOBILE ACCIDENT INSURANCE****Certain amounts not overpayments**

200 Notwithstanding section 197, the following amounts are not overpayments for the purposes of this Part:

- (a) any benefits paid in advance by the insurer before making a decision respecting the claimant's entitlement, unless the benefits were obtained by fraud;
- (b) any benefits paid by the insurer before a decision of the appeal commission, Court of Queen's Bench or the Court of Appeal to cancel the benefit or reduce the amount of the benefit, unless the benefits were obtained by fraud;
- (c) any benefits paid by the insurer before a decision of the insurer to cancel the benefit or reduce the amount of the benefit, unless the benefits were obtained by fraud.

2002, c.44, s.30.

DIVISION 13**Compensation pursuant to other Acts and Plans****Private insurance claims not affected**

201 This Part does not limit or affect the rights of any person who claims or receives a benefit to claim compensation pursuant to a private insurance scheme.

2002, c.44, s.30.

Compensation pursuant to *The Workers' Compensation Act, 2013* or other legislation

202(1) In this section, "**other compensation**" means:

- (a) compensation pursuant to *The Workers' Compensation Act, 2013* or any other Act, or any legislation of any other jurisdiction, that provides for compensation of persons injured in accidents; or
- (b) compensation pursuant to the *National Defence Act* (Canada) or the *Royal Canadian Mounted Police Act*.

(2) Notwithstanding any other provision of this Part, no benefits are payable to a person as a result of an accident if that person is entitled, with respect to that accident, to other compensation.

(3) Notwithstanding that an insured is receiving other compensation, an insured is entitled to receive a benefit pursuant to Division 4 for an employment the insured held at the date of the accident if:

- (a) the insured sustains a bodily injury caused by a motor vehicle;
- (b) because of the bodily injury mentioned in clause (a), the insured is unable to continue the employment; and

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

- (c) the insured:
 - (i) is not entitled to other compensation for the loss of that employment;
or
 - (ii) the benefits paid to the insured pursuant to that other compensation are less than the maximum yearly insurable earnings set out in section 136.
- (4) A benefit pursuant to Division 4 and provided pursuant to subsection (3):
 - (a) must be calculated in the manner set out in Division 4 and the regulations;
and
 - (b) must only compensate an insured for any income loss not compensated for by that other compensation up to the maximum yearly insurable earnings set out in section 136.
- (5) Notwithstanding that an insured's surviving spouse or dependant is receiving other compensation, the surviving spouse or dependant is entitled to receive a death benefit for an employment the insured held at the date of the accident if the surviving spouse or dependant:
 - (a) is not entitled to other compensation for any employment held by the insured; or
 - (b) the other compensation and the benefits paid to the surviving spouse or dependant are less than the death benefits the insured's surviving spouse or dependant would have been entitled to receive pursuant to Division 5.
- (5.1) If an insured dies in an accident leaving no spouse or dependant, the insurer shall pay to the insured's estate, parents or non-dependent children, as the circumstances require, the benefits the insured's estate, parents or non-dependent children would be entitled to receive pursuant to section 147 if:
 - (a) no other compensation is provided for the accident; or
 - (b) the other compensation provided is less than the benefits that otherwise would be payable pursuant to section 147.
- (5.2) Notwithstanding any other provision of this Act or any other Act or law, the insurer is required to provide benefits pursuant to subsection (5.1) only in an amount that will compensate the insured's estate, parents and non-dependent children, as the circumstances require, for any loss not compensated by the other compensation and only to the maximum amount prescribed in section 147.
- (6) A death benefit provided pursuant to subsection (5):
 - (a) must be calculated in the manner set out in Division 5 and the regulations;
and
 - (b) must only compensate an insured for any income loss not compensated for by that other compensation up to the maximum benefits allowable pursuant to Division 5.

c. A-35**AUTOMOBILE ACCIDENT INSURANCE**

(7) If a person is receiving a benefit and because of another bodily injury becomes entitled to compensation pursuant to *The Workers' Compensation Act, 2013* or is receiving compensation pursuant to *The Workers' Compensation Act, 2013* and, because of another bodily injury, the person becomes entitled to a benefit:

- (a) the insurer and the Workers' Compensation Board shall:
 - (i) make a joint decision distinguishing between the bodily injury attributable to the accident with respect to which a benefit is payable and the bodily injury for which a wage loss benefit is payable pursuant to *The Workers' Compensation Act, 1979*; and
 - (ii) pay compensation in proportion to the attribution of the person's bodily injuries; and
- (b) the insurer or the Workers' Compensation Board, as the case may be, shall continue to pay the benefit or the compensation until the joint decision is made.

(8) The insurer may make an agreement with the Workers' Compensation Board respecting the procedure to be followed for handling claims by a person mentioned in subsection (7), and the Workers' Compensation Board has the power to make that agreement.

2002, c.44, s.30; 2004, c.35, s.28; 2013,
c.W-17.11, s.189.

Disability payments to reduce income replacement benefit

203 If, as a result of an accident, an insured is entitled to an income replacement benefit and a disability benefit pursuant to the *Canada Pension Plan* or any similar program in a jurisdiction outside Saskatchewan, the insurer shall reduce the income replacement benefit by the amount of the disability benefit payable to the insured.

2002, c.44, s.30.

Subrogation for compensation pursuant to other Acts

204(1) In this section, "**compensation legislation**" means:

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

(2) Subject to section 103, if an insured receives compensation pursuant to compensation legislation, the body authorizing compensation pursuant to compensation legislation:

- (a) is subrogated to the insured's rights; and
- (b) has the same remedies as the insurer to recover the compensation from any person who is not resident in Saskatchewan and is responsible for the accident, or who is liable to pay compensation for bodily injury caused by the non-resident.

2002, c.44, s.30; 2013, c.W-17.11, s.189.

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

DIVISION 14
General

Substantial compliance with forms and notices

205 Substantial compliance with requirements respecting the content of forms, notices or other documents is sufficient unless the insurer is of the opinion that it would result in unfairness to any person.

2002, c.44, s.30.

***Ex gratia* payments**

206 If the insurer considers that the payment of a claimant's claim is in the interest of the insurer and the better administration of this Part, the insurer may authorize an *ex gratia* payment to be made to that claimant.

2002, c.44, s.30.

Immunity

207 No action lies or shall be instituted against the insurer, any director, officer, employee or agent of the insurer, the appeal commission or any member or employee of the appeal commission where that person is acting pursuant to the authority of this Part or the regulations, for any loss or damage suffered by any person by reason of anything in good faith done, caused or permitted or authorized to be done, attempted to be done or omitted to be done, by any one or more of them pursuant to or in the exercise or supposed exercise of any power conferred by this Part or the regulations or in the carrying out or supposed carrying out of any duty imposed by this Part or the regulations.

2002, c.44, s.30.

Non-compellability

208(1) The insurer, a director, officer, employee or agent of the insurer, or a member or employee of the appeal commission is not compellable to give evidence or to produce any documents or other things in a court or in a proceeding of a judicial nature concerning any information that comes to the knowledge of the insurer, a director, officer, employee or agent of the insurer or a member or employee of the appeal commission in the exercise of the powers, performance of the duties or carrying out of the functions of the insurer or appeal commission pursuant to this Part.

(2) With respect to the insurer, a director, officer, employee or agent of the insurer or a member or employee of the appeal commission, this section does not apply to an appeal pursuant to this Act.

2002, c.44, s.30.

c. A-35**AUTOMOBILE ACCIDENT INSURANCE****Agreements**

209 The insurer may enter into agreements that the insurer considers necessary or appropriate to advance the purposes of this Part with:

- (a) the Government of Canada or the government of any other province of Canada or a minister, agent or official of that government;
- (b) the government of any other country or any jurisdiction within that country; or
- (c) any person, agency, organization, association, enterprise, institution or body within or outside Saskatchewan.

2002, c.44, s.30.

Calculation of interest rates

210 If interest is payable pursuant to this Part or the regulations, the interest is to be calculated in accordance with the regulations.

2002, c.44, s.30.

Service

211 If a claim, notice or other document is required to be given or served pursuant to this Part or the regulations, the claim, notice or document is to be given or served in the prescribed manner.

2002, c.44, s.30.

Rights on subrogation

212(1) If the insurer or another body is given a right of subrogation pursuant to this Part by reason of paying or becoming liable to pay a benefit or compensation, the insurer or other body is deemed to be an assignee and is subrogated to all rights of recovery of the person to whom or with respect to whom or for whose benefit the benefit or compensation was paid or is payable.

(2) For the purposes of subsection (1), the insurer or other body may:

- (a) bring an action in its own name to recover the amount of the benefit or compensation paid or payable; or
- (b) join with the person to whom or with respect to whom or for whose benefit the benefit or compensation was paid or is payable to bring an action in the name of that person for the recovery of damages resulting from the bodily injury caused by a motor vehicle of an insured.

2002, c.44, s.30.

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

Inspection of vehicle

213(1) The insurer shall be permitted, at all reasonable times, to inspect any motor vehicle designated in an insured's owner's certificate and its equipment.

(2) If a motor vehicle has an onboard computer or sensing diagnostic module installed in the motor vehicle, the insurer is entitled to examine the contents of the onboard computer or sensing diagnostic module and make a copy of any information on the onboard computer or sensing diagnostic module.

2002, c.44, s.30.

Use of collected information

214 The insurer may use any information collected pursuant to section 213 to determine a claimant's entitlement to benefits pursuant to this Part.

2002, c.44, s.30.

Part to prevail

215 This Part and the regulations prevail if there is any conflict or inconsistency between:

- (a) this Part and the regulations; and
- (b) any other Act or regulations.

2002, c.44, s.30.

Regulations

216(1) The Lieutenant Governor in Council may make regulations:

- (a) defining, enlarging or restricting the meaning of any word or phrase used in this Part but not defined in this Part;
- (b) respecting the procedure applicable to, and the proof required for, claims for benefits;
- (c) respecting the form and content of applications made pursuant to this Part;
- (d) prescribing educational institutions or classes of educational institutions for the purposes of this Part;
- (e) defining catastrophic injuries for the purposes of this Part;
- (f) prescribing practitioners for the purposes of this Part;
- (g) prescribing permanent impairments for the purposes of this Part;
- (h) prescribing specialized equipment for the purposes of this Part;
- (i) prescribing the manner in which the insurer may determine the industrial average wage or the consumer price index;

c. A-35**AUTOMOBILE ACCIDENT INSURANCE**

- (j) prescribing vehicles or classes of vehicles for the purposes of subclause 101(2)(b)(vii);
- (k) respecting structured compensation orders pursuant to section 103;
- (l) prescribing persons or classes of persons as third parties for the purposes of sections 103 and 104;
- (m) respecting the manner in which appeals may be made to the Court of Queen's Bench or appeal commission pursuant to section 107, 109 or 177;
- (n) determining primary employment for the purposes of this Part;
- (o) prescribing other benefits that the insurer shall consider when calculating an income replacement benefit;
- (p) prescribing the manner in which an income replacement benefit is to be calculated pursuant to section 113, 114 or 115, subsection 119(4) or section 122 or 123;
- (q) respecting yearly employment incomes, including determining yearly employment incomes for workers in the employ of another and for self-employed workers, establishing classes of employment and determining the amount of yearly employment income on a weekly or yearly basis;
- (r) prescribing the terms and conditions governing the adjustment or termination of benefits pursuant to Division 4;
- (s) prescribing the terms and conditions governing a substitute worker benefit pursuant to section 116 or 117;
- (t) prescribing the terms and conditions governing a family enterprise benefit pursuant to section 118;
- (u) prescribing the terms and conditions governing a caregiver benefit pursuant to section 119;
- (v) prescribing the terms and conditions governing other weekly benefits pursuant to section 120;
- (w) respecting standards and procedures for determining an employment for an insured pursuant to subsection 119(4) or section 132 or 133, including establishing classes of employment, determining yearly employment incomes on a yearly or weekly basis for each class of employment based on work experience, and establishing the manner of reducing the income of an insured;
- (x) respecting the calculation and payment of a lump sum benefit pursuant to section 128 and, for that purpose, respecting rules to determine when an insured is deemed to have received an income replacement benefit or a substitute worker benefit for 24 consecutive months;
- (y) prescribing the manner in which a benefit shall be reduced pursuant to section 126, 129 or 135;

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

- (z) respecting the calculation of the net income of an insured, including the amount of the income tax, premiums and contributions mentioned in section 139;
- (aa) respecting the calculation of a death benefit pursuant to section 144 or 145;
- (bb) respecting the manner in which a death benefit may be capitalized and respecting the payment of a capitalized death benefit;
- (cc) respecting the payment of education benefits pursuant to subsection 149(1);
- (dd) prescribing any other benefit to be provided pursuant to section 150, 151 or 162, the terms and conditions under which the insurer may offer these benefits and the maximum amounts that may be provided;
- (ee) respecting the payment of permanent impairment benefits pursuant to section 152;
- (ff) respecting the establishment of a schedule of permanent impairments;
- (gg) prescribing basic activities of daily living;
- (hh) for Divisions 3 and 7, respecting the reimbursement of expenses, including the expenses that are eligible for reimbursement, the terms and conditions under which the insurer may reimburse expenses and the maximum amounts that may be reimbursed;
- (ii) respecting examinations pursuant to section 158, including the content of reports based on examinations;
- (jj) respecting benefits payable pursuant to section 159 or 160;
- (kk) respecting the release of information pursuant to section 165;
- (ll) respecting the reimbursement of the cost of reports pursuant to section 169, including the maximum amount that may be reimbursed;
- (mm) respecting the manner in which the insurer shall determine responsibility for an accident pursuant to section 107, 109, 174 or 175;
- (nn) prescribing the circumstances in which benefits may be subject to garnishment, seizure, attachment, execution and any other process or claim pursuant to subsection 182(1);
- (oo) for the purposes of section 187, authorizing the use of ratios calculated pursuant to section 186;
- (pp) respecting mediation pursuant to Division 11, including prescribing the manner in which mediation must be conducted and prescribing any fees for the purposes of mediation;

c. A-35**AUTOMOBILE ACCIDENT INSURANCE**

- (pp.1) respecting the manner in which appeals to the appeal commission may be commenced and the management and conduct of appeals before the appeal commission, including prescribing a fee to be paid when commencing appeals;
 - (pp.2) respecting the manner in which applications to the appeal commission may be made and the management and conduct of applications to the appeal commission, including prescribing a fee to be paid when applying;
 - (pp.3) respecting costs that may be awarded pursuant to Division 11;
 - (qq) respecting the transmission of facsimiles of documents to and from the insurer;
 - (rr) prescribing any matter necessary for the purposes of section 202;
 - (ss) respecting the manner in which an insured's debt to the insurer may be deducted from compensation payable to the insured by the insurer;
 - (tt) respecting the calculation of interest pursuant to section 210;
 - (uu) respecting the manner in which a claim, notice or other document is to be served or given pursuant to section 211 and, for that purpose, prescribing when a claim, notice or other document is deemed to have been served or given;
 - (vv) prescribing any other matter or thing that this Part requires to be prescribed in the regulations;
 - (ww) respecting any other matter that the Lieutenant Governor in Council considers necessary to carry out the intent of this Part.
- (2) For the purposes of this Part, the Lieutenant Governor in Council may make regulations:
- (a) adopting, as amended from time to time or otherwise, all or any part of any relevant code or standard;
 - (b) amending for the purposes of this Part any code or standard adopted pursuant to clause (a);
 - (c) requiring compliance with any code or standard adopted pursuant to clause (a).
- (3) A regulation made pursuant to clause (1)(o) or (x) may be made retroactive to a day not earlier than the day on which this Part comes into force.

AUTOMOBILE ACCIDENT INSURANCE

c. A-35

Transitional – rehabilitation benefits

217(1) Notwithstanding any other Act or law, if, on the day that this section comes into force, an insured was receiving a medical or rehabilitation benefit pursuant to Part VIII of *The Automobile Accident Insurance Act*, as that Act existed on the day before this section comes into force, with respect to an accident that occurred on or after January 1, 1995 but before the day that this Part comes into force, that insured is entitled to rehabilitation benefits in the amount RB calculated in accordance with the following formula:

$$RB = \$5,000,000 - (OPP + A)$$

where:

OPP is the total amount of all benefits paid to or on behalf of that insured pursuant to Divisions 3 and 7 of Part VIII of *The Automobile Accident Insurance Act*, as that Act existed on the day before this section comes into force; and

A is the total amount of all statutory benefits or motor vehicle insurance moneys that have been paid to the insured or that the insured is entitled to receive to cover daily living assistance, medical costs or rehabilitation expenses to lessen the insured's disability pursuant to:

- (a) a judgment arising out of an accident;
- (b) the settlement of an insurance claim arising out of an accident;
- (c) a motor vehicle insurance policy that compensates that insured as a result of the accident; or
- (d) a statutory benefit plan that compensates that insured as a result of the accident.

(2) Notwithstanding any other Act or law, this Part and the regulations made for the purposes of this Part apply, with any necessary modification, to benefits payable pursuant to subsection (1).

2002, c.44, s.30.

Transitional – income replacement benefits

218 Notwithstanding any other Act or law, if, on the day that this section comes into force, the insurer is paying an income replacement benefit to a beneficiary pursuant to Part VIII of *The Automobile Accident Insurance Act*, as that Act existed on the day before this section comes into force:

- (a) the insurer shall recalculate the beneficiary's net income in the manner set out in section 139;
- (b) the recalculated net income mentioned in clause (a) applies to the beneficiary who is receiving the income replacement benefit; and
- (c) section 139 applies to any recalculation of the beneficiary's income replacement benefit.

2002, c.44, s.30.

c. A-35**AUTOMOBILE ACCIDENT INSURANCE****Transitional – appeals and commission**

218.1(1) Notwithstanding any other Act or law, in the case of a decision of the insurer that was made pursuant to Division 11 of Part VIII of *The Automobile Accident Insurance Act*, as that Division existed on the day before this section comes into force, and that was not appealed to the Court of Queen's Bench before the coming into force of this section and for which the time limits for an appeal have not expired:

- (a) the decision may be appealed only in accordance with Division 11;
 - (b) Division 11 and the regulations made for the purposes of Division 11 apply, with any necessary modification, to the appeal and Division 11 and the regulations made for the purposes of Division 11 must be followed in the conduct of the appeal; and
 - (c) no appeal of the decision may be made pursuant to Division 11 of Part VIII of *The Automobile Accident Insurance Act*, as that Division existed on the day before this section comes into force, and that Division as it existed no longer applies to the appeal of the decision.
- (2) In the case of a decision of the insurer with respect to an accident that occurred before the date that this section comes into force that is being appealed to the appeal commission, sections 188 to 196.5 apply, with any necessary modification, as if the accident had occurred on or after the date that this section comes into force.

2002, c.44, s.30.

219 Repealed. 2002, c.44, s.30.

220 Repealed. 2002, c.44, s.30.