



BILL NO. 52

Government Bill

*2nd Session, 61st General Assembly
Nova Scotia
59 Elizabeth II, 2010*

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

CHAPTER 18
ACTS OF 2010

**AS ASSENTED TO BY THE LIEUTENANT GOVERNOR
MAY 11, 2010**

The Honourable Graham Steele
Minister responsible for the Insurance Act

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

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

Be it enacted by the Governor and Assembly as follows:

1 Section 5 of Chapter 231 of the Revised Statutes, 1989, the *Insurance Act*, as amended by Chapter 1 of the Acts of 2003 (Second Session), is further amended by adding immediately after subsection (3) the following subsection:

(3A) A regulation made pursuant to clause (na) of subsection (3) may define words or expressions differently for different provisions of this Act.

2 (1) Subsections 113B(2), (3) and (5) of Chapter 231 are repealed.

(2) Section 113B of Chapter 231, as enacted by Chapter 1 of the Acts of 2003 (Second Session), is further amended by adding immediately after subsection (8) the following subsection:

(9) This Section and any regulations made with respect to this Section do not apply to any action for damages with respect to an incident that occurs on or after the twenty-eighth day of April, 2010.

3 Chapter 231 is further amended by adding immediately after Section 113B the following Section:

113BA(1) Notwithstanding any enactment or any rule of law, but subject to subsection (6) of Section 113B and subsection (4) of Section 113E, the owner, operator or occupants of an automobile, any person present at the incident and any person who is or may be vicariously liable with respect to any of them, are not liable in an action in the Province for the following damages for income loss and loss of earning capacity from bodily injury or death arising directly or indirectly from the use or operation of the automobile:

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

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

(2) Subsection (1) applies to all actions, including actions under the *Fatal Injuries Act* and similar legislation.

(3) Subsection (4) of Section 113B, subsection (1) of this Section and subsection (3) of Section 113E do not protect a person from liability if the person is defended in the action by an insurer that is not licensed to undertake automobile insurance in the Province, unless the insurer has filed an undertaking to become licensed to undertake automobile insurance in the Province.

4 Section 113D of Chapter 231, as enacted by Chapter 1 of the Acts of 2003 (Second Session), is amended by

- (a) adding “(1)” immediately after the Section number;**
- (b) adding “or Section 113E” immediately after “113C” in the first line; and**
- (c) adding the following subsections:**

(2) Notwithstanding subsection (1), an insurer shall offer an optional policy or endorsement to compensate an insured with respect to damages for any award for pain or suffering or any other non-monetary loss in excess of the amount prescribed in the regulations or with respect to any other limitation on damages in Section 113E.

(3) The Governor in Council may make regulations the Governor in Council considers necessary or advisable to carry out effectively the intent and purpose of subsection (2) including, without limiting the generality of the foregoing, regulations respecting all associated costs and charges.

5 Chapter 231 is further amended by adding immediately after Section 113D the following Section:

113E (1) In this Section,

- (a) “accident” means an accident or other incident arising directly or indirectly from the use or operation of an automobile;
- (b) “accident claim” means a claim for loss or damages for bodily injury or death arising from an accident;
- (c) “claimant” means a person injured as a result of an accident;
- (d) “minor injury”, with respect to an accident, means
 - (i) a sprain,
 - (ii) a strain, or
 - (iii) a whiplash-associated disorder injury,

caused by that accident that does not result in a serious impairment.

(2) This Section and any regulations made pursuant to or with respect to this Section applies to any accident claim with respect to an accident that occurs on or after the twenty-eighth day of April, 2010.

(3) In an accident claim, the amount recoverable as damages for non-monetary loss of the claimant for a minor injury must be calculated or otherwise determined in accordance with the regulations.

(4) In an accident claim, a judge shall, on motion made before trial with the consent of the parties or in accordance with an order of a judge who conducts a pre-trial conference, determine, for the purpose of subsection (3), whether the claimant has suffered a minor injury.

(5) The determination of a judge on a motion under subsection (4) is binding on the parties at the trial.

(6) Where no motion is made under subsection (4), the judge shall determine for the purpose of this Section whether the claimant has suffered a minor injury.

(7) The Governor in Council may make regulations

(a) providing for the classification of, or categories of, minor injuries;

(b) providing for the assessment of injuries including, without limiting the generality of the foregoing, regulations establishing or adopting guidelines, best practices or other methods for assessing whether an injury is or is not a minor injury;

(c) governing damages, including the amounts of or limits on damages, for non-monetary loss for minor injuries;

(d) providing for or otherwise setting out circumstances under which a minor injury to which this Section would otherwise apply is exempt from the application of this Section;

(e) governing the application of this Section in respect of injuries arising out of an accident if the injuries consist of a combination of minor injuries to which this Section applies and injuries to which this Section does not apply;

(f) providing for or otherwise setting out circumstances under which an injury that results in a serious impairment is a minor injury;

(g) respecting the onus of proof relating to minor injuries;

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

(8) A regulation made pursuant to subsection (7) may be made retroactive in its effect to a day not earlier than the day that this Section has effect.

(9) The exercise by the Governor in Council of the authority contained in subsection (7) is regulations within the meaning of the *Regulations Act*.

6 Subsection 159(1) of Chapter 231, as enacted by Chapter 1 of the Acts of 2003 (Second Session), is amended by adding immediately after clause (k) the following clauses:

(ka) establishing or governing a system or process for the examination, assessment and treatment or rehabilitation of bodily injuries suffered by an insured as a result of an accident as defined in Section 113E in respect of which benefits are payable under Section 140;

(kb) governing the payment of any fees, levies or other assessments in respect of a system or process established under clause (ka) including, without limitation, respecting

(i) the amount of the fees, levies or other assessments or the manner in which and by whom any of those amounts are to be determined, and

(ii) to whom and by whom the fees, levies or other assessments are to be paid;

7 (1) This Act, except clauses 4(a) and (c), has effect on and after July 1, 2010.

(2) Clauses 4(a) and (c) come into force on such day as the Governor in Council orders and declares by proclamation.
