

No-fault amendments to the Insurance (Vehicle) Act

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On May 1, 2021, the no-fault amendments to the *Insurance (Vehicle) Act*, R.S.B.C. 1996, c. 228, and several related statutes by Bill 11 *Attorney General Statutes (Vehicle Insurance) Amendment Act, 2020* came into force in British Columbia. A no-fault insurance model bars legal action on motor vehicle accident claims and provides access to increased accident benefits, including medical care and wage loss benefits, regardless of who is at fault.

This summary outlines the key changes to the *Insurance (Vehicle) Act*, focusing on the practical implications for the insurance market.

What are the changes?

Among the many changes, the amendments include:

- Bar on legal action for motor vehicle accident claims;
- Increase of healthcare and rehabilitation benefits up to a maximum of \$7.5 million per accident (an increase from the current limit of \$300,000); and
- Income replacement benefit up to a maximum of \$1,200 per week, based on an estimated gross annual income of up to \$93,400 (an increase from the current limit of \$740 per week).

How will the changes work?

The changes remove the option to commence legal actions for injuries arising from motor vehicle accidents, apart from some limited exceptions. These exceptions include vehicle and vehicle part manufacturers, vehicle retailers, garage service operators, establishments licensed to serve alcohol and drivers who cause bodily injury and are subsequently convicted of a prescribed *Criminal Code* offence. For these exceptions, the recovery is limited to non-pecuniary, punitive, exemplary or similar non-compensatory damages.

Furthermore, each party is “severally liable”, which means that if more than one party is liable, each party is only liable for their respective portion of the damages.

Practical implications

The implementation of the no-fault insurance regime reduces legal costs, including litigation support required by many insured individuals.

As the proposed legislation limits the circumstances in which a claim can be commenced, as well as the types of damages that can be recovered, no-fault insurance could reduce risk for various industries. The largest components of most personal injury cases are cost of future care and wage loss, so shifting these damages into a no-fault regime makes a significant difference in terms of exposure.

For example, under the previous regime, parties are joint and severally liable for all damages. This means that an injured party can go after any one responsible party for the entire amount of the damages, and the responsible party then has to commence a separate claim to recover from a co-defendant. Under the previous regime, this means a venue could potentially have to pay out a multi-million dollar settlement if someone was seriously injured by a drunk driver the venue had overserved. The venue would be able to seek contribution from the driver for their share of the liability, which can be expensive, time consuming, and is not always successful.

Under the new regime, the venue would only be liable to the injured party for a portion of the non-pecuniary, punitive, exemplary, or other non-compensatory damages. Accordingly, no-fault insurance warrants a re-evaluation of certain industries in British Columbia that were previously seen as risky.

A possible exposure in the new regime is the wage loss cap for a gross annual income of up to \$93,400. This puts high-income earners at risk for potential wage loss. However, individuals with a higher gross income per year will be given the option to buy additional coverage to increase income replacement. Further, private insurers will continue to be able to participate by selling a variety of optional insurance products including income replacement for high-income earners.

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