



Province of Alberta

INSURANCE ACT

FAIR PRACTICES REGULATION

Alberta Regulation 128/2001

With amendments up to and including Alberta Regulation 126/2019

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Office Consolidation

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(Consolidated up to 126/2019)

ALBERTA REGULATION 128/2001

Insurance Act

FAIR PRACTICES REGULATION

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Definition

1 In this Regulation, "Act" means the *Insurance Act*.

AR 128/2001 s1;96/2006

Claims disclosure

2 Where there is a claim against the insured under a contract of automobile insurance and in the insurer's opinion the insured is liable, the insurer who settles the claim must

- (a) notify the insured of the insured's liability within 30 days of forming the opinion that the insured is liable, and
- (a.1) repealed AR 145/2011 s2,
- (b) on the request of the insured, disclose to the insured
 - (i) the dollar amount of any claim paid to a third party,
 - (ii) the date of the settlement,

- (iii) the name of the third party, and
- (iv) the nature or purpose of the settlement.

AR 128/2001 s2;96/2006;145/2011

Disclosure of insured's right to choose service provider

3 Where an insurer, insurance agent or adjuster is notified by an insured of a loss respecting damage to property and the insurer, insurance agent or adjuster recommends a particular service provider to the insured, the insurer, insurance agent or adjuster must advise the insured in writing, at the time of the recommendation, that the insured may have the repairs estimated and completed by a service provider of the insured's choice, except where the insurer exercises its right to undertake the repairs.

AR 128/2001 s3;96/2006

Prohibited tied selling practices

4 For the purpose of section 509(1)(b) of the Act, the following tied selling practices are prohibited:

- (a) where an insurer or insurance agent other than the holder of a restricted certificate is asked to sell insurance to a person, informing the person that the person must purchase another product or service, including an insurance policy, from the insurer or insurance agent, as the case may be, before the insurance requested will be undertaken;
- (b) where an insurer is asked to make a loan to a person, informing the person that the person must purchase a product or service, including an insurance policy, from the insurer before the loan will be made.

Right to rescind contract of insurance

5(1) A person who buys a contract of life insurance, accident and sickness insurance or, subject to subsection (2)(b), travel insurance underwritten by an insurer may rescind the contract within 10 days after receiving the insurance policy or within any longer period specified in the contract.

(2) Subsection (1) does not apply

- (a) to a segregated fund or an annuity offered by the insurer, or
- (b) to travel insurance where the policy term is less than 190 days.

(3) A person who rescinds a contract under subsection (1) is entitled to receive from the insurer a refund of the whole premium that has been paid.

AR 128/2001 s5;145/2011

Notice of retained lawyer and disclosure of policy limits

5.1(1) When a lawyer has been retained by a plaintiff in an action arising out of an automobile accident, the lawyer must, within 30 days following the date the action is filed with the Court, give notice to the defendant's insurer that the lawyer has been retained.

(2) Within 30 days following receipt of the notice under subsection (1), the defendant's insurer must inform the lawyer whether there is a motor vehicle liability policy issued by the insurer to the defendant in respect of the automobile and, if so, the liability limits under that policy.

(3) The disclosure of the liability limits under the policy does not preclude the defendant's insurer from disputing the extent of its liability in accordance with the rights of an insurer under Subpart 2 of Part 5 of the Act.

(4) Where the existence of the motor vehicle liability policy and the liability limits under the policy are disclosed pursuant to subsection (2), that information must not be disclosed to the judge or jury until after judgment is given in the action.

(5) This section applies in respect of automobile accidents occurring on and after the date of the coming into force of this section.

AR 145/2011 s4

Notice of dispute resolution process

5.2(1) In this section, "dispute resolution process" means the dispute resolution process described in section 519 of the Act.

(2) An insurer must give written notice to the insured of the dispute resolution process

- (a) within 10 days after the insurer determines that a dispute has arisen between the insurer and the insured about a matter under Statutory Condition 11 set out in section 540, or Statutory Condition 4(9) set out in section 556, of the Act, or
- (b) within 70 days after the insured has submitted a proof of loss, if the insurer has not yet made a decision as to the validity or the amount payable in respect of the claim.

(3) A written notice referred to in subsection (2) must include a copy of section 519 of the Act.

AR 145/2011 s4;183/2011

Notice of limitation period

5.3(1) In this section,

- (a) “claimant” means
 - (i) a beneficiary,
 - (ii) an insured, a group life insured or a debtor insured,
 - (iii) a person who has a claim against an insured who has initiated a claim for indemnity under a contract of insurance, or
 - (iv) a person referred to in section 579 of the Act;
- (b) “insured” means a person insured by a contract of insurance, whether named in the contract or not.

(2) An insurer must give written notice to a claimant of the applicable limitation period

- (a) if the claim has not been satisfactorily settled, within 60 days from the date the claimant notifies the insurer of the claim, in the case of a claimant referred to in subsection (1)(a)(i) or (ii),
- (b) within 60 days of the insurer’s first becoming aware that an insured is claiming indemnity for a claim lodged by a third party against the insured, in the case of a claimant referred to in subsection (1)(a)(iii),
- (c) within 60 days of the insurer’s first becoming aware that a claimant referred to in subsection (1)(a)(iv) has initiated an action pursuant to section 579 of the Act, or
- (d) within 5 business days from the date the claimant’s claim is denied.

(3) The written notice referred to in subsection (2) must indicate the name of the Act or regulation that refers to the applicable limitation period.

(4) An insurer is not required to give notice under subsection (2) if at the time the notice is required to be given the insurer is aware that the claimant is represented by legal counsel.

(5) Despite subsection (2), with respect to a claim by a person insured under Section B of a standard automobile insurance policy, notification of the fact of an applicable limitation period is required only in respect of a denial of a claim under one or more of those coverages under Section B.

(6) Despite subsection (2), with respect to a claim by a group person insured under a group accident and sickness policy, no notice under subsection (2) is required to be given if the claim is with respect to a coverage other than disability coverage.

(7) If an insurer fails to give notice under subsection (2) when required to do so, the Court may, on application by the claimant,

- (a) order that the applicable limitation period be extended, and
- (b) grant any other remedy that the Court considers appropriate.

AR 145/2011 s4

5.4 Repealed AR 126/2019 s2.

Membership requirement

5.5(1) Subject to subsection (2), an insurer that is licensed to undertake life insurance, accident and sickness insurance or creditor protection insurance must be a member of the OmbudService for Life & Health Insurance or a complaint body approved by the Superintendent.

(2) A property and casualty company that undertakes accident and sickness insurance or creditor protection insurance must be a member of the General Insurance OmbudService or the OmbudService for Life & Health Insurance or a complaint body approved by the Superintendent.

AR 145/2011 s4

Court order requiring advance payment

5.6(1) In this section, “claimant” means a plaintiff who is or alleges to be entitled to recover losses or damages from an insured who is covered by a motor vehicle liability policy.

(2) A claimant may apply to the Court for a payment from the insured’s insurer under section 581(1) of the Act.

(3) The Court may make an order under section 581 of the Act, on any conditions it considers appropriate, requiring the insurer to make a payment to a claimant who applies to the Court under subsection (2) of this section where the Court is satisfied that

- (a) as a result of the injuries of the claimant, the claimant is unable to pay for the necessities of life, or
 - (b) the payment is otherwise appropriate.
- (4) The Court may make the order in advance of giving judgment in an action involving the claimant and the insured.
- (5) Section 581(3) and (4) of the Act apply in respect of any payment made pursuant to an order referred to in this section.

AR 145/2011 s4

Prescribed exclusions for fire and other perils**5.7(1)** In this section,

- (a) “biological hazard” means any process or phenomenon of organic origin or conveyed by biological vectors, including exposure to pathogenic micro-organisms, toxins and bioactive substances that may cause loss of life, injury, illness or other health impacts, property damage, social and economic disruption or environmental damage in the absence of its control;
- (b) “chemical hazard” means any physical agent that may cause loss of life, injury, illness or other health impacts, property damage, social and economic disruption or environmental damage in the absence of its control;
- (c) “commercial property” means all property other than residential property;
- (d) “nuclear energy hazard” means the radioactive, toxic, explosive or other hazardous properties of nuclear substances as defined in the *Nuclear Safety and Control Act* (Canada);
- (d.1) “pressure vessel” means any boiler, vessel or apparatus and their connected pipes while under pressure or while in use or operation, but does not include any tank with an internal diameter of 610 mm or less used for storage of hot water or any vessel if the maximum internal working pressure of the vessel does not exceed 103 kilopascals above atmospheric pressure;
- (e) “radioactive material” includes
 - (i) spent nuclear fuel rods that have been exposed to radiation in a nuclear reactor,
 - (ii) radioactive waste material, and

(iii) unused enriched nuclear fuel rods;

(f) “residential property” means property used primarily for residential purposes, including, without limitation, the units and common property of a residential condominium building;

(g) “terrorism” means any unlawful act, including, without limitation, the use of violence or force or threat of violence or force committed by one or more persons acting on behalf of any group, organization or government for the purposes of influencing any government or instilling fear in the public, but does not include vandalism;

(h) “vandalism” means the wilful or malicious destruction or defacement of public or private property, including, without limitation, religious and cultural property, but does not include the wilful or malicious destruction or defacement of public or private property intended to cause

(i) a risk to the health or safety of the public or any segment of the public,

(ii) endangerment to a person’s life, or

(iii) death or bodily harm to a person.

(2) For the purposes of section 545(3) of the Act, the prescribed perils are lightning and explosion.

(3) For the purposes of section 545(3)(a) of the Act, the following are prescribed exclusions under a contract of insurance:

(a) in respect of residential property,

(i) fire occasioned by or happening through

(A) in the case of goods, their undergoing any process involving the application of heat, or

(B) riot, civil commotion, war, invasion, an act of a foreign enemy, hostilities, whether war is declared or not, civil war, rebellion, revolution, insurrection or military power;

(ii) lightning causing destruction or loss to electric devices or appliances;

(iii) an explosion of natural, coal or manufactured gas in a building not forming part of a gas works occasioned

by or happening through one or more perils specified in subclause (i)(B);

- (iv) loss or damage to property caused by contamination by radioactive material directly or indirectly resulting from fire, lightning or explosion;
 - (v) subject to section 541 of the Act, loss or damage to property directly or indirectly resulting from fire or explosion caused by a criminal or intentional act or omission of an insured;
 - (vi) biological hazard, chemical hazard or nuclear energy hazard, including contamination by radioactive material directly or indirectly resulting from fire or explosion caused by terrorism;
 - (vii) explosion of any pressure vessel, gas turbine or any moving or rotating machinery or its parts;
- (b) in respect of commercial property,
- (i) an exclusion described in clause (a), or
 - (ii) fire or explosion caused by terrorism.
- (c) in respect of property insured under a contract of boiler and machinery insurance, explosion of gas or unconsumed fuel within any furnace or within the passage from a furnace or pressure vessel to the atmosphere.

(4) For the purposes of section 545(3)(b) of the Act, the prescribed circumstances of the fire relating to which an insurer may not provide an exclusion in a contract are as follows:

- (a) occurrence of fire within 30 days of the insured property being vacant;
- (b) occurrence of fire after the insurer has issued a vacancy permit in respect of the insured property.

AR 145/2011 s4;129/2012

Exclusion of statutory conditions

5.8 For the purposes of section 540(2) of the Act, the prescribed classes of insurance to which the statutory conditions are not applicable are deposit protection insurance, home completion insurance, home warranty insurance, mortgage insurance, title insurance, credit insurance, credit protection insurance and travel insurance.

AR 145/2011 s4;225/2013

Innocent co-insured

5.9(1) For the purposes of section 541(1)(d) of the Act, a class of persons prescribed by regulation is any class of persons other than individuals.

(2) For the purposes of section 541(3) of the Act, a person described in that provision must

- (a) co-operate with the insurer in respect of the investigation of the loss, including, without limitation, by submitting to an examination under oath, if requested by the insurer, and
- (b) produce for examination, at such reasonable place and time as is designated by the insurer, all documents that relate to the loss in addition to those required by the contract.

AR 145/2011 s4

Expiry

6 For the purpose of ensuring that this Regulation is reviewed for ongoing relevancy and necessity, with the option that it may be repassed in its present or an amended form following a review, this Regulation expires on April 30, 2020.

AR 128/2001 s6;96/2006;39/2016;45/2018

Coming into force

7 This Regulation comes into force on the coming into force of any section of the Act.



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