

SASKATCHEWAN'S NEW YEAR'S RESOLUTION? A NEW INSURANCE ACT TO RING IN THE NEW YEAR

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On January 1, 2020, *The Insurance Act* ("**New Act**") and *The Insurance Regulations* ("**New Regulations**") came into force in Saskatchewan, marking the first major overhaul to Saskatchewan's insurance legislation in decades. The New Act was created to modernize the way insurance is regulated in the province and to provide enhanced protection to consumers. Order in Council 478/2019 proclaimed the first day of 2020 as the coming into force date for the majority of the New Act, with a few provisions set to be proclaimed into force at a later date. Saskatchewan's prior insurance statute, *The Saskatchewan Insurance Act*, was repealed when the New Act came into force.

Highlighted below are several important changes created by the New Act. Since Alberta and Manitoba have similar insurance legislation, these changes are also compared to their relevant counterparts from the statutes in those provinces.

New Licensing Categories

The New Act creates a licensing regime for insurance intermediaries, which now includes managing general agents ("**MGAs**") and third party administrators ("**TPAs**"). Saskatchewan is the first province/territory in Canada requiring a license to act as an MGA or TPA. In contrast, Alberta and Manitoba's licensing regimes only require insurers and insurance agents to be licensed.

An MGA is defined in the New Act as an insurance agent that manages all or part of the business of an insurer and carries out specific activities on behalf of that insurer, including:

- soliciting, negotiating or accepting applications for insurance from licensed insurance agents;
- effecting and countersigning contracts of insurance;
- accepting risks;
- underwriting insurance contracts;
- entering into written agency agreements with licensed insurance agents;
- supervising and monitoring the activity of licensed insurance agents with whom it has entered into written agency agreements; and

- undertaking any other prescribed duties or activities.

Once licensed, MGA's have the authority to sponsor selling agents, and are obligated to perform ongoing monitoring of the persons they sponsor. Employees of an MGA that hold a valid insurance agent's license specifying that a particular MGA is their employer can only represent that one MGA, and as such will not be issued another license to represent a different MGA, TPA, insurer or business. As well, the New Act notes that the employee's license is automatically suspended the moment they are no longer an employee. Where such an individual ceases to be an employee of the MGA, the MGA must notify the Superintendent in writing within five days that the agent is no longer an employee, and provide the reasons why.

A TPA is defined in the New Regulations as "a business that, for compensation, carries out activities to administer a contract of insurance on behalf of an insurer, other than solely clerical activities, but does not include a business that is licensed as an insurance agent or managing general agent."

Similar to MGAs, employees of a TPA that hold a valid insurance agent's license will not be issued another license to represent a different TPA, MGA, insurer or business. Likewise, the employee's license will be suspended when their employment ends, and, similar to MGAs, the TPA must notify the Superintendent.

Unfair Practices

In an effort to further protect consumers, the New Act prohibits certain conduct in the insurance market. Specifically, the New Act prohibits insurers, insurance intermediaries and adjusters from making false or misleading statements, representations or advertisements, engaging in tied selling practices, performing any unfair, misleading, deceptive, fraudulent or coercive acts or practices, and any other act or commission prohibited by regulation.

There is also a prohibition on insurance intermediaries providing gifts, payments or anything of value as a method of inducing customers to purchase insurance, except as permitted by the New Regulations.

These prohibitions on unfair practices are substantially similar to those prohibited by Alberta's *Insurance Act*. *The Insurance Act* in Manitoba contains various provisions that prohibit similar behaviours, however, because the provisions are drafted differently, there may be some variation in how they are applied.

Fair Practices

In addition to the prohibitions noted above, the New Act outlines various fair practices that were incorporated for added consumer protection, including:

- a requirement that insurers, insurance intermediaries and adjusters advise policyholders suffering a loss that they have the right to choose a service provider to make repairs;

- a 10-day right of rescission in favour of the consumer in the case of life, accident and sickness or specific travel insurance, and the corresponding right to the return of premiums paid;
- a requirement on insurers in receipt of a notice of claim to notify the claimant of the applicable limitation period; and
- a requirement that insurers advise policyholders of the options available to them in the event a dispute occurs regarding payment of a claim or loss, or the insurer denies the insured's claim.

Alberta's *Fair Practices Regulation* is substantially similar to Saskatchewan's fair practices regime, except that Alberta only requires the insurer to notify the insured of the dispute resolution process – not of the options available to them. Manitoba's statute is fairly different in this regard, as it does not require insurers to advise policyholders of their right to choose the service provider that makes repairs under a claim, advise an insured of the applicable limitation period once a claim is made, nor advise the insured of the options available to them if a dispute occurs after a claim is made.

Self-Evaluative Audits

The New Act requires an insurer, at the request of the Superintendent of Insurance, to self-assess its practices to identify non-compliance, and promote compliance with, insurance legislation, guidelines and other professional standards. This process is to be conducted in accordance with the New Regulations, and a copy of the audit must be provided to the Superintendent.

Documents produced during the self-evaluative audit process are privileged, and any person or entity involved in the process cannot be compelled to give or produce evidence regarding the process in any civil or administrative proceeding. However, these protections do not apply in proceedings commenced against the insurer by the Superintendent.

Alberta's *Insurance Act* and *The Insurance Act* in Manitoba provide substantially similar protections to those identified in the New Act. In all three provinces, there is a positive obligation to conduct the self-evaluative audit when requested by the Superintendent, but in Alberta and Manitoba such a request can also be made by their respective Ministers of Finance.

The Financial and Consumer Affairs Authority of Saskatchewan ("FCAA") has published two documents to help insurers understand the new regime, and is in the process of creating two more. These publications can be accessed [here](#).

The first FCAA publication is a guideline on where and how non-Saskatchewan insurers (extra-provincial, federal and foreign insurers) are required to keep their records. The other is an interpretation bulletin on the notice that an insurer is required to provide to an insured under section 7-25. Where a dispute arises regarding

an insured's claim, an insurer is required to provide them with written notice of the dispute resolution options that are available. The interpretation bulletin clarifies that, in respect of the references to OmbudServices in section 7-25, the insurer is only required to notify the insured of the applicable OmbudService(s) of which the insurer is a member, and which applies to the type of insurance at issue.

As of January 1, 2020, the New Act and the New Regulations are in force, creating a markedly different insurance regime in Saskatchewan. It remains to be seen whether any other provinces/territories will follow Saskatchewan's lead to adopt similar licensing measures for MGAs and TPAs.

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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