

State Farm®

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Sent by Email: insurance@gov.ab.ca

Mr. Gartner;

On behalf of State Farm Mutual Automobile Insurance Co., State Farm Fire & Casualty Co. and State Farm International Life Insurance Co. Ltd., I would like to thank the Alberta government for allowing us the opportunity to review and provide comments with respect to the unproclaimed sections of the Insurance Amendment Act, 2008.

Mindful of the goal to 'maintain the balance between improving consumer protection, transparency and fairness with a regulatory climate that supports Alberta's economy,' State Farm offers the following comments regarding a number of the regulation proposals:

1. Disclosure of Limitation Periods –

Proposed Regulation:

- a) *Insurance Companies and their appointed adjusters will be required to notify policyholders in writing of the time period for bringing a legal action against the insurer. Notice of the limitation period must be given on up to three separate occasions: (1) upon notification of a claim; (2) on denial of the claim; and (3) at least 60 days, but no more than 120 days, before the limitation period expires.*
- b) *The first notice must include a copy of the relevant section of the Insurance Act that sets out the limitation period.*
- c) *In the event of non-compliance, the regulation will authorize the court to extend the limitation period or give such other remedy as the court deems necessary.*

State Farm fully supports the need to advise policyholders of the limitation period but feel that disclosure upon the notification of a claim or within the first 60 days is sufficient. As well, notifying policyholders of the limitation period in the event of a claim being denied also is prudent and would correspond with our supplying another 'proof of loss' form.

If an insurer has already advised the Claimant upon notification of the loss, or when a claim is denied, further notification would appear to be unnecessary. Having to advise a policyholder 60 – 120 days prior to the expiration of the limitation period would simply result in claim files being kept open unnecessarily, or re-opened if they are already closed. This could lead to confusion by policyholders on the status of a claim or at the very least increased costs associated with handling claims.

Should the Alberta government move forward with the 3rd notification, we would suggest that exemptions be made in cases where the file is settled, or if the insurer denies a claim and has sent the limitation wording at the time of closing the file. An expectation that the insurer would re-open a denied claim to send out another reminder does not seem reasonable.

2. Transitional Provisions –

Proposed Regulation:

To be determined based on consultation.

State Farm supports the approach whereby policies that begin prior to the proclamation of the amended regulations, continue to operate under the previous Act/regulations for the remainder of the policy term. New policies, and policies renewed after proclamation of the amended regulations would fall under the provisions of the amended regulations.

Similarly, claims initiated prior to the proclamation of the amended regulations would fall under the provisions of the former Act/regulations. Claims initiated after the passage of the amended regulations would then fall under the provisions of the amended regulations.

4. Facilitation of Electronic Transactions –

Proposed Regulation:

Coordinate the process and types of records that can be completed electronically with the Electronic Transactions Act with the exceptions for the following types of records:

- *Notices of other documents currently required to be sent by registered mail,*
- *Designation of change of beneficiary, and*
- *Change of ownership of insurance policies.*

State Farm supports the Alberta government's decision to amend the Insurance Act such that it aligns with the Electronic Transactions Act, as this move better reflects the ever-changing and developing electronic marketplace. We would encourage the government to consider further changes that will allow flexibility such as moving away from paper documents (i.e. insurance applications) that require 'hard' signatures.

9. Rights of an Insured –

Proposed Regulation:

List the contractual rights an insured, under a life and accident & sickness insurance contract, will be able to exercise when a beneficiary is designated irrevocably under the contract.

In light of these changes, State Farm suggests that different rules may be needed for different life insurance products.

For example, while increasing coverage on some products might not impair the irrevocable beneficiary's rights under the policy, on some products (I.e. universal life), increases in the face amount will result in an increase in the monthly deduction. This, in turn, could cause the account value to be less than it would be if the increase did not occur; if the policyholder does not increase the amount they are paying into the policy as premium.

11. & 12. Innocent Co-Insured –

11. Proposed Regulation:

To be determined based on consultation.

12. Proposed Regulation:

Prescribe the following requirements on the 'innocent co-insured' where a person seeks to rely upon this section of the Insurance Act.

- *Co-operate with the insurer in the investigation of the loss.*
- *Participate fully in an examination under oath request by the insurer.*
- *Provide all relevant information and documents in addition to those required by the contract.*

State Farm would expect that the proposed regulations continue to support an insurer's rights with respect to subrogating against the at-fault insured.

To that end we would also recommend editing the policy language in order to reduce the likelihood that a court would find the insurance contract against public policy. The language, as it stands, could be interpreted to read that if an insured simply complies with the claim investigation they will be entitled to invoke the "innocent co-insured" status.

Instead, we recommend the following language:

- "Where a person seeks to rely upon this section of the *Insurance Act* it is a condition precedent for a person claiming status, coverage or benefits as an "innocent co-insured" to comply with any policy contract conditions along with the following: [then list out the three bullets] "

This will emphasize to the courts, counsel and insureds that by simply fulfilling the three activities listed above, it does not obligate the carrier to treat the insured as an innocent co-insured and pay the claim.

Claim payment will require them to actually be innocent and cooperate with all their contractual duties.

13. Fire Insurance Coverage –

Proposed Regulation:

Allow insurance companies to exclude coverage for fire losses resulting from the causes set out in section 544(1)(a) and (2) of the current Insurance Act. Exclusions for fire damage resulting from an earthquake or a terrorist act would not be permitted.

Allow insurance companies to exclude fire losses occurring under any circumstances after the insured property has been vacant for more than 30 days, except where the insurance company has agreed, in writing to cover fire losses while the property is vacant. In such case, all fire losses will be covered except losses resulting from a cause in (1) above.

We would point out that the change to ‘terrorist act’ fire peril coverage would require additional actuarial analysis and possible policy wording changes under loss or damage not insured (section 2(g) WAR), to allow for fire coverage in the event of an ‘undeclared hostility.’

The inherent risk associated with ‘terrorist act’ exposures is not something which is currently accounted for, so it is difficult for us (and most P&C insurers in Canada we would imagine) to quantify the risk exposure associated with this. More than likely, the inclusion of this specific peril could result in significant premium increases.

14. Disclosure of Dispute Resolution Process –

Proposed Regulation:

- a) Insurance companies to notify policyholders in writing of the dispute resolution process. The notice must be given;*
 - Within 10 days of the insurer making the determination that there is a disagreement to which the process is applicable, or*
 - Where the insurer has not made a decision on the claim, no later than 60 days after the proof of loss was received by the insurer.*

- b) A copy of the relevant provision of the Act that sets out the dispute resolution process must accompany the notice.*

State Farm supports the requirement to give notice in writing of the dispute resolution process (including the appraisal route) within 10 days since this should help to expedite settlement of such claims.

It is unclear however, as to what is meant by ‘the insurer determining that there is a disagreement.’ While this statement may seem obvious at first glance, in practical application it may not always be obvious that there is a disagreement.

State Farm would recommend that this point be clarified so that we can make a more informed review and comment.

Again, we thank the Alberta government for allowing us the opportunity to provide comments on the *Consultation on Proposed Regulations for the Amended Insurance Act*.

Should you have any questions with respect to our comments please feel free to contact me.

Sincerely,

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