

Bulletin No. 01-2010

November 26, 2010

To: All Insurance Companies Licensed in Alberta For the Class of Automobile

Attention: Chief Executive Officer

Re: Miscellaneous Provisions Amendment Regulation

The attached Superintendent's Bulletin is being sent to all licensed insurance companies writing automobile insurance in Alberta.

Sincerely,

[ORIGINAL SIGNED]

Arthur Hagan
Deputy Superintendent of Insurance

Attachment



**SUPERINTENDENT OF INSURANCE
BULLETIN 01-2010**

This Bulletin is being sent to all insurance companies writing automobile insurance in Alberta, to alert them to and provide information on upcoming changes to the automobile insurance system with respect to leased and rented vehicles.

In 2007 the *Traffic Safety Act* was amended to cap the liability of vehicle leasing companies when their vehicles are operated by lessees. In 2009 this Act was further amended to cap liability of vehicle rental companies when their vehicles are operated by rentees. The cap will also apply to persons selling or financing vehicles through formal arrangements and retaining title to the vehicle until they are fully paid for the vehicle. At the same time a consequential amendment was made to the *Insurance Act* to provide regulation making authority to change the priority of payment among motor vehicle liability policies with respect to damages caused by the operator of a leased or rented vehicle.

On November 23, 2010 sections 12, 13 and 14 of the *Traffic Safety Amendment Act, 2007*, and section 9 of the *Traffic Safety Amendment Act, 2009*, were proclaimed to come into force on March 1, 2011. In addition, the *Commercial Vehicle Certificate and Insurance Amendment Regulation* and the *Miscellaneous Provisions Amendment Regulation* were also passed and also come into force on March 1, 2011. These legislative changes will (1) implement a \$1 million limit (or greater amount determined by regulation) on the liability of owners of leased, rented, conditionally sold or financed vehicles when their vehicles are operated by a lessee, rentee, buyer or other driver, (2) change the priority of which motor vehicle liability policy is responsible for the payment of damages caused by the operation of these vehicles, and (3) exempt owners that are the lessors, renters, sellers or financiers of commercial vehicles used or intended to be used to transport passengers from the \$1 million limit of liability (or greater amount determined by regulation) provided in section 187 of the *Traffic Safety Act* where the lessors etc. are in a non-arm's length relationship with the day-to-day operator of the vehicle. Attached for your information is a copy of the *Miscellaneous Provisions Amendment Regulation* and the *Commercial Vehicle Certificate and Insurance Amendment Regulation*.

Section 14 of the *Traffic Safety Amendment Act, 2007* amends section 650 of the *Insurance Act*. The amendment provides regulation making authority to change the priority for the payment of automobile insurance with respect to liability arising from or occurring in connection with the ownership, use or operation of an automobile owned by a lessor or rental car company.

Section 650 of the *Insurance Act* states that insurance under a contract evidenced by a valid owner's policy is a first loss insurance and insurance attaching under any other valid motor vehicle liability policy is excess insurance only. The *Miscellaneous Provisions Amendment Regulation* (Regulation) changes the priority of motor vehicle liability insurance applicable for the payment of damages caused by a lessee of a leased vehicle or the rentee of a rental vehicle.

The Regulation states that insurance available under a contract evidenced by an owner's policy issued to a vehicle leasing or rental company is first loss insurance unless the lessee or rentee has liability insurance available under any other contract evidenced by a motor vehicle liability policy and the lessee or rentee is entitled to indemnity under that contract. To ensure that innocent third parties are not adversely affected by this change, the Regulation also states that the coverage in the motor vehicle liability policy issued to the leasing or rental company remains primary until such time as the insurer who issued a contract to the lessee or rentee acknowledges in writing that it is responding to a claim or civil action on behalf of the lessee or rentee.

The Regulation also states that if an insurer wrongfully fails to respond to a claim or civil action on behalf of a lessee, rentee or driver, that insurer is liable to indemnify another insurer that does respond to the claim or civil action, for any liability, costs and expenses incurred as a result of the first insurer's failure to respond.

Recognizing that there may be a number of motor vehicle liability policies providing coverage to a lessee, rentee or other driver of a leased or rented vehicle, the Regulation outlines which of these various insurance contracts is primary and which contracts are next in line as being excess to the previous primary contract. For instance, if an employee is renting a vehicle on behalf of their employer, any motor vehicle liability policy issued to the employer, that provides the employee with coverage, will be primary to any other motor vehicle liability coverage available to the employee through another policy including their own owner's policy or an owner's policy in their spouse's name.

Insurance companies writing automobile insurance in Alberta and their insurance adjusters should review these legislative changes so that they are able to respond to claims involving leased, rented and conditionally sold or financed vehicles in an appropriate and orderly fashion.

If further information is required on the legislative changes outlined in this Bulletin please contact Mr. Peter Blandy, Compliance Manager, at 780-415-8556.

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Dennis Gartner
Superintendent of Insurance