



FINANCE

Assistant Deputy Minister
Pensions, Insurance and Financial Institutions
and
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**TO: INSURANCE COMPANIES LICENSED FOR THE CLASS OF
AUTOMOBILE INSURANCE IN ALBERTA**

There has been much confusion within the automobile insurance industry concerning the relationship of the *Fair Practices Regulation* and the recently enacted “All Comers Rule” in section 613.1 of the *Insurance Act*.

Please be advised the *Fair Practices Regulation* is not a regulation enacted under section 613.1(2)(f) of the *Insurance Act*, therefore, other than the exceptions listed in section 613.1(2)(a) to (e) no automobile insurer, insurance agent or broker may take any adverse contractual action with respect to an insured or an application for a contract of compulsory automobile insurance. In addition, should there be any conflict between the *Fair Practices Regulation* and the *Insurance Act* the *Act* would take precedence.

For your information attached are copies of section 613.1, and a copy of the Insurance Bureau of Canada’s opinion on the relationship between section 613.1 and the *Fair Practices Regulation*.

Dennis Gartner
Superintendent of Insurance

Att.

INS#1-10/06/04

INSURANCE AMENDMENT ACT, 2003 (NO. 2)

Chapter 40

Prohibition on refusal to issue contract, etc.

613.1(1) In this section, “adverse contractual action” means, with respect to basic coverage,

- (a) refusing to process an application for automobile insurance;
- (b) refusing to issue a contract;
- (c) refusing to renew a contract;
- (d) terminating a contract;
- (e) cancelling a contract;
- (f) refusing to provide any coverage or endorsement;
- (g) refusing to continue any coverage or endorsement;
- (h) any action respecting a contract, not referred to in clauses (a) to (g), that is prescribed or otherwise described by regulation as adverse contractual action.

(2) An insurer, insurance agent or insurance broker must not, directly or indirectly, take any adverse contractual action with respect to an insured or an applicant for a contract except for one or more of the following reasons:

- (a) the non-payment of a premium or any portion of a premium;
- (b) the failure of the insured or the applicant for a contract to inform the insurer or to keep the insurer informed, where requested to do so by the insurer, as to who is the principal driver of the automobile for which the insurance coverage is or is to be issued;
- (c) in the case of an insurer that is a provincial or extra-provincial company, the insurer is required to cease to undertake or to offer to undertake insurance pursuant to section 25(2);
- (d) in the case of an insurer that is a federally authorized company, the federal Superintendent of Financial Institutions has ordered or otherwise directed the insurer to cease carrying on business or insuring risks in Canada;
- (e) the insurer has given notice under section 661.2(3) that the insurer intends to withdraw from the business of automobile insurance;
- (f) where permitted by regulation, any reasons not referred to in clauses (a) to (e) that are prescribed or otherwise described by regulation.

(3) Where

- (a) a premium or any portion of a premium that is owing in respect of a contract is in arrears,
- (b) the insurer takes adverse contractual action by reason of those arrears not being paid, and
- (c) the person liable for those arrears applies to the insurer to renew or issue a contract or to any other insurer to issue a contract,

the insurer may refuse to renew or issue, as the case may be, a contract to that person until those arrears are paid to the insurer to which the arrears are owing.

(4) The Lieutenant Governor in Council may make regulations

- (a) permitting adverse contractual action to be taken other than under subsection (2)(a) to (e) and prescribing or otherwise describing any reasons not referred to in subsection (2)(a) to (e) under which adverse contractual action may be taken;
- (b) prescribing or otherwise describing any action, not referred to in subsection (1)(a) to (g), as adverse contractual action;
- (c) governing the taking of adverse contractual action;
- (d) governing the issuing or renewing of contracts;
- (e) governing any transitional matter concerning the application of this section in respect of matters dealt with under this section;
- (f) providing for any matter that the Lieutenant Governor in Council considers advisable for carrying out the purpose and intent of this section.



INTERNAL MEMORANDUM

TO: FILE

FROM: Randy J. Bundus

Re: **Alberta Fair Practices Regulation and Section 613.1 of Alberta Insurance Act**

Date September 27, 2004

The Fair Practices Regulation, A.Reg. 382/2003 (attached as Appendix A) sets out a number of underwriting restrictions placed on insurers in respect of automobile insurance. The Regulation sets out circumstances in which an insurer may not refuse to issue a contract, refuse to renew a contract, terminate a contract or refuse to provide or continue a coverage. These grounds include, among other things, age and gender of insured, age of vehicle, unsatisfactory claims record, etc. The Fair Practices Regulation also requires an insurer to provide the insured or applicant with notice when it refuses, terminates or changes a coverage, along with reasons for this decision. The regulation also restricts the circumstances in which an agent or broker may submit an application to the Facility Association.

Section 5 of Bill 53 (attached as Appendix B), which creates new Section 613.1 of the Alberta Insurance Act headed "Prohibition on Refusal to Issue Contract, etc.", is expected to be proclaimed into effect in the near future.

Questions have been raised as to the relationship between Section 613.1 of the Insurance Act and the Fair Practices Regulation. It is a basic principle that a regulation cannot conflict with legislation. To the extent it does, it is not effective. The issue, therefore, is whether the Fair Practices Regulation conflicts with Section 613.1 of the Insurance Act.

A careful examination of Section 613.1 reveals that its provisions apply to insurers, insurance agents and insurance brokers and prohibit them from taking an "adverse contractual action". The definition of "adverse contractual action" covers the same ground as Section 2(1) of the Fair Practices Regulation insofar as it relates to refusing to issue or renew a contract, terminating or cancelling a contract, or refusing to provide or continue a coverage or endorsement. Section 613.1 adds a new item not contained in the Fair Practices Regulation, i.e. any action respecting a contract that is described by regulation as an "adverse contractual action". Such regulation has not yet been enacted. The circumstances in which an insurer, agent or broker may take an adverse contractual action are limited and are set out in Subsection (2).

The main difference between Section 613.1 of the Insurance Act and the Fair Practices Regulation is that the Fair Practices Regulation sets out underwriting factors that may not be used, while Section 613.1 creates a take-all-comers environment with limited exceptions. Under the Fair Practices Regulation, an insurer may not refuse to issue or renew a policy or terminate a policy solely on the basis of one of the prohibited grounds. Under Section 613.1 of the Insurance Act, an adverse contractual action is allowed only if one or more of the circumstances listed in Subsection (2) arises.

The net result is that if conduct which would be **prohibited** by Section 613.1 is **permitted** under the Fair Practices Regulation, the conduct will be **prohibited**.

The effect of Section 613.1 will depend entirely on the regulations that are developed to define further “adverse contractual actions” and to describe other reasons when an adverse contractual action may be taken by an insurer, broker, or agent. The Fair Practices Regulation does not do this so it should not be assumed that the circumstances listed in the Fair Practices Regulation, where an insurer may legally perform a “prohibited practice”, will be reproduced in the Regulation to be made under Section 613.1.

It should be noted that under the Fair Practices Regulation, the obligation on insurers to provide notice and reasons for a refusal to insure or continue coverage will remain in effect until these provisions are repealed.

RJB/vb
Attachment