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# **Proposed No-Fault Insurance Scheme in British Columbia**

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## What is the proposed no-fault insurance scheme?

In a “no-fault” system, a driver’s own automobile insurance policy provides first-party insurance coverage, which will cover the individual’s recovery and care benefits, regardless of which driver was responsible for the accident. The province of British Columbia is labelling this new coverage system as the “Enhanced Care” coverage system.

## What are the proposed changes?

The B.C. Government says that the new system will provide a new maximum accident benefit amount of at least \$75 million to all British Columbians injured in a crash. For example, the government says that British Columbians can expect the following changes:

- There will be increased access to medical care and recovery benefits up to \$7.5 million, increased from the current limit of \$300,000.
- There will be other benefit enhancements, including income replacement benefits 60% higher than the current limit of \$740 per week, up to \$1,200 per week (the weekly net income based on an estimate gross annual income of up to \$93,400).
- ICBC will be required to assist claimants to make claims and make efforts to ensure that claimants are informed of the benefits that they are entitled to.
- ICBC suggests that there will be lower insurance rates of approximately 20% or \$400.

The Attorney General, David Eby, introduced Bill 11 – Attorney General Statutes (Vehicle Insurance) Amendment Act, 2020, on March 4, 2020, which sets out the proposed changes. Under the Enhanced Care coverage system, there will be increased and additional benefits coverages, including coverage for recreational, travel and accommodation, extended catastrophic benefits, caregiver, indemnity for students that miss school as a result of injury, family business, permanent impairment compensation, grief counselling services, and more.

Individuals may purchase optional insurance, such as income replacement for high-income earners, gap coverage to provide for wage loss coverage waiting periods, and funeral and/or death benefit top-ups.

Further, Bill 11 proposes amendments to the *Insurance (Vehicle) Act* regarding ICBC making pre-litigation payments with respect to accidents occurring before May 1, 2021. ICBC stated that the amendments, which will be provided in Part 9 of the *Insurance (Vehicle) Act*, will increase the portion of an award that goes to an injured person rather than towards legal costs. Part 9, if passed, provides that ICBC may offer to make a pre-litigation payment to a person who has a right of action against an insured or ICBC respecting an accident if the claimant has not commenced an action against an insured or ICBC. Interestingly enough, for the purposes of a contingency agreement that an insured has entered into with a lawyer, a pre-litigation payment is not considered an amount recovered in an action in respect of an accident. This creates a potential conflict of interest between interests of lawyers and their clients.

We will have a better idea of the details of the no-fault system once the regulations are finalized, which is estimate to be completed in Fall of 2020.

Amendments to the *Insurance (Vehicle) Act* will set out limitations on actions and proceedings and provide a framework for enhanced accident benefits, amongst other things.

### **When will the changes be effective?**

Bill 11 passed its First Reading on March 4, 2020, and is pending approval by the Legislative Assembly and receipt of Royal Assent in spring of 2020. The amendments to the *Insurance (Vehicle) Act* and other legislation would be effective May 1, 2021.

The enhanced benefits under the Enhanced Care cover system applies to accidents occurring on or after May 1, 2021.

### **Who is entitled to benefits?**

An individual who is resident in B.C. at the time of the accident and has a driver's policy with ICBC is entitled to benefits if the person sustained bodily injury caused by a motor vehicle accident in Canada or the United States or on a vessel travelling between Canada and the United States.

### **Are there exceptions to the system?**

Under the new no-fault system, the general rule is that no person has a right to sue for bodily injury caused by a motor vehicle accident. However, the legislation carves out some exceptions. If an individual is injured in a crash caused by a driver who is convicted of prescribed Criminal Code offences, such as impaired driving, the driver convicted of the offence may be liable for damages owed to the injured party. A driver also maintains the right to sue a restaurant for over-serving alcohol or a vehicle manufacturer if those parties are at fault for the accident.

Notably, there is currently no exception for municipalities, road contractors, or construction companies. Thus, even if one of these parties is at-fault for the accident, they are immune from liability.

ICBC has a right to recover benefits paid to an injured party if the injury was caused by a party who is not exempted from being sued (such as a restaurant) and who is responsible for the bodily injury of the injured party

### **What happens if a person does not agree with ICBC's decision regarding the no-fault benefits?**

Under the new system, the B.C. government proposes that if claimants wish to dispute ICBC's decision regarding their claim for benefits, claimants can apply to the Civil Resolution Tribunal to dispute their claims regarding entitlement to benefits. If a claimant is not satisfied the Civil Resolution Tribunal's decision, the claimant can apply for judicial review by the Supreme Court of British Columbia.

The B.C. government further proposes to establish a new Fairness Office, which will have authority to review and resolve claimant's complaints related to fairness and make recommendations to ICBC.

## **How does it compare with other provinces in Canada that also have no-fault insurance schemes?**

### Comparison to Manitoba

B.C.'s proposed no fault system most closely mirrors the no-fault system that Manitoba currently has, which is a government monopoly on basic automobile insurance.

### Comparison to Saskatchewan

B.C.'s proposed no-fault system is similar to Saskatchewan's system in that individuals in Saskatchewan are permitted to sue the at-fault driver if the driver is convicted of a Criminal Code offence, including criminal negligence, dangerous driving, and impaired driving. However, as opposed to B.C.'s proposed system, Saskatchewan has a hybrid system that allows people to opt-out of the no-fault system by purchasing insurance with lesser benefits, which allows individuals to maintain the right to sue for damages.

### Comparison to Ontario

Ontario has a fully privatized and limited no-fault insurance system. Residents of Ontario are allowed to sue for pain and suffering deemed severe, such as traumatic brain injury.

## **Conclusion**

The government has promised greater and more accessible benefits to residents of B.C. under the proposed no-fault system. It remains to be seen whether limiting litigation over motor vehicle accident claims will provide for greater access to "enhanced care" or deprive individuals of a fair settlement.

For more information on this topic or for further questions, please contact:

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