

Lawyers raising concerns about Alberta's no-fault auto insurance plans

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Law360 Canada (November 22, 2024, 1:48 PM EST) -- Alberta has announced plans to bring in a predominantly no-fault auto insurance system by 2027, but lawyers in the province are saying the move is troublesome because it removes the right to sue in most cases and will likely not lead to the savings the province claims it will.

Premier Danielle Smith unveiled the province's "Care-First" auto insurance proposals on Nov. 21. Under the new system, all Albertans injured in a collision would gain access to enhanced benefits, including improved medical treatment, rehabilitation and income supports. For those with more serious, lasting injuries, a one-time permanent impairment benefit would provide compensation, serving a similar purpose to pain and suffering damages in court.

Smith said insurance in the province is "neither affordable nor care-focused."

"Albertans have been clear they need an auto insurance system that provides better, faster care and is more affordable," she said. "When it's implemented, our new privately delivered, care-centred insurance system will put the focus on Albertans' recovery, providing more effective support and will deliver lower rates."

According to the province, the "care-first" system offers substantial increases in the benefits all Alberta drivers would receive. It said the model shifts the focus from court battles to "meaningful support" for recovery, and by reducing the need for litigation the system minimizes legal costs that drive up premiums. The government said its proposals mirror and build upon the Saskatchewan insurance model, where at-fault drivers can be sued for pain and suffering damages if they are convicted of a criminal offence, such as impaired driving or dangerous driving, or conviction of certain offences under the *Traffic Safety Act*.

When fully implemented, the province said the new system will lead to individual cost savings of up to \$400 per year. The proposals come after Alberta held a public online survey to gauge people's response to two reports it commissioned recommending changes to auto insurance.

"Keeping more money in Albertans' pockets is one of the best ways to address the rising cost of living," said Nathan Neudorf, the province's minister of affordability and utilities. "This shift to a care-first automobile insurance system will do just that by helping lower premiums

for people across the province.”

And in the interim, before the new system kicks in, Alberta is adjusting auto insurance rate caps to help pay for rising insurance costs. Rate increases for good drivers will be capped at 7.5 per cent in 2025, as opposed to 2024 when good drivers saw their rate increases capped at 3.7 per cent. A “good driver” is everyone in the province except those who have had recent at-fault accidents or traffic convictions.

In a statement, Insurance Bureau of Canada (IBC) vice-president Aaron Sutherland said his organization and its members “welcome today’s announcement and are keen to roll up our sleeves and work with the government to ensure these reforms benefit consumers, enhance the care provided to those injured in collisions, and improve premiums for the long term.”

“Rising legal costs are one of the key drivers of the premiums drivers pay in Alberta today, and actions to address these present the greatest opportunity for improved rates,” he said. “Reforms will take time, and the continuation of the rate cap is likely to lead to further consumer harm and a deterioration of Alberta’s competitive auto insurance market. The legislative and regulatory details of these changes will be critical to its success in improving affordability for drivers while expanding the care provided to those injured in collisions.”

But the plans for moving to a primarily no-fault system are raising the ire of some lawyers in the province. Craig Gillespie, managing partner at Cuming & Gillespie LLP, said under no-fault insurance companies “essentially act as judge and jury about what’s best for your claim.”

“So not only are they going to be making the decisions about how much an injured person should get, about what type of treatment they should get, and about how long they should get it, those decisions are going to be made within the context of accounting to shareholders and generating a profit,” he said.

Gillespie, former president of the Alberta Civil Trial Lawyers Association (ACTLA), said the provinces that currently employ a no-fault system, namely Manitoba, Saskatchewan and British Columbia, all have government-owned insurers — but Alberta’s system “is going to be run by private insurance companies that are driven by profit.”

“There’s nothing currently in use that would compare to what the government is proposing,” he said. “If I was in an accident, or any of my family were, I would have to trust an insurance company that’s driven by profit to make decisions that are in my family’s best interest, and I have no ability and no recourse to call anybody or ask anybody to help me if I disagree because the system removes any ability for legal challenges. To me that’s terrifying.”

Jackie Halpern of Calgary’s McLeod Law LLP, speaking on behalf of ACTLA, said the association was deeply disappointed in the decision to move to no-fault.

“No-fault auto insurance strips Albertans of a fundamental freedom, which is the right to sue at-fault parties and hold insurance companies accountable through a court of law,” she said. “We believe this policy will result in the worst of all outcomes: Albertans will pay more in premiums only to receive fewer consumer protections and lose their rights to challenge insurance companies in court. Already profitable insurance companies are now empowered more than ever in Alberta’s system and will reap all the benefits of no-fault insurance.”

Halpern said studies from around the world have shown that no-fault systems do not deliver on reduced premiums in the long term.

“The province said it will lead to lower rates, but that remains to be seen — it’s based on a lot of assumptions,” she said. “From a consumer perspective, the rate cap has been working. There are a number of insurance companies in Alberta that are very profitable. Some are losing money, but that’s more to do with increases in property damage, expensive vehicles and auto theft. And this doesn’t address that.”

Gillespie said lawyers were working with the government to propose solutions that they believed were more equitable and more in line with what Albertans are looking for.

“We offered things like reduction of legal fees in terms of caps on rates and limits on legal advertising because we understand Albertans want lower insurance premiums — and I certainly don’t disagree with that,” he said. “But we don’t believe that the litigation system is part of the problem.”

More information about Alberta’s auto insurance proposals can be found [here](#).

If you have any information, story ideas or news tips for [Law360 Canada](#), please contact Ian Burns at ian.Burns@lexisnexis.ca or call 905-415-5906.