

Superintendent of Insurance

Interpretation Bulletin

Bulletin Number:	07-2023
Title:	Auto Insurance Take All Comers Rule Interpretation
Date:	April 5, 2023
To:	All automobile insurers licensed in Alberta

Purpose

In accordance with section 792.1 of the [Insurance Act \("Act"\)](#), this Interpretation Bulletin sets out that the Superintendent of Insurance ("Superintendent") interprets certain provisions of Alberta's automobile insurance adverse contractual action regulatory framework as follows:

1. The words "refusing to" as used in subsections 555(1)(a) and 555(1)(b) of the Act, include any act or practice that hinders an applicant's/insured's acquisition of private passenger ("PPV") automobile insurance such that the applicant/insured is likely to abandon a request for a quote. In addition, such a hindering act or practice is unfair, and contravenes subsection 509(1)(c) of the Act. More details of this interpretation are included below under "Superintendent's interpretation for quoting processes;" and
2. Effective June 1, 2023, [Order in Council 147/2023](#) amended the [Adverse Contractual Action Regulation \("ACAR"\)](#) by expanding the circumstances in which an insurer may take an adverse contractual action ("ACA") against an applicant or insured with respect to PPV insurance. In addition to the existing reasons an insurer may take an ACA, but within these expanded circumstances, insurers may consider only the following as grounds to take an ACA:
 - a. Pursuant to subsection 2(a)(v) of the amended ACAR, for applicants/insureds with a history of fraudulent activity in relation to an automobile insurance policy, when the applicant/insured has:
 - i. Three or more instances where an insurer has, on the basis of misrepresentation, terminated or declined to issue or renew automobile insurance;
 - ii. Had at least one automobile insurance claim of any type denied in whole or in part, based on automobile insurance fraud; or

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- iii. Been convicted of fraud in relation to an automobile insurance policy. The instance(s) of such fraud must have occurred less than seven years before the day of the request to obtain, update or renew an automobile insurance policy;
- b. Pursuant to subsection 2(a.1) of the amended ACAR, when clear and compelling objective facts cause an insurer to reasonably believe an applicant or insured will probably use the automobile insurance policy or the automobile in the future for fraudulent purposes.

When an insurer takes ACA in circumstances contrary to requirements set out in 2.a. and 2.b. above, the insurer commits an unfair act or practice as prohibited by section 509 of the Act.

See “Timing and enforcement” section below for additional information applicable to these interpretations.

Background

A key objective of Alberta’s PPV insurance regulatory framework is ensuring consumers can readily access the insurance required to operate an automobile on Alberta roads. This is set out in section 555 of the Act and its attendant ACAR. These legislative expectations are commonly referred to as the “Take All Comers Rule” (“TAC Rule”).

The TAC Rule protects the rights and interests of automobile insurance consumers and contributes to public confidence in the automobile insurance sector. It ensures PPV drivers can readily obtain premium quotes and purchase or renew automobile insurance.

The TAC Rule also protects the rights and interests of insurers by deterring deceptive or fraudulent conduct. Insurers are permitted to take an ACA in prescribed circumstances, such as when an applicant/insured misrepresents their risk when applying for automobile insurance.

Albertans who are denied basic insurance coverage by an insurer taking ACA under the Act and ACAR may be able to purchase coverage from another insurer in the regular market. Alternatively, consumers are entitled to purchase basic coverage through the Facility Association, which is Alberta’s automobile insurance market of last resort.

Superintendent’s interpretation for quoting processes

Due to technological advancements, insurers are able to provide the vast majority of quotes in mere seconds. The Superintendent has learned that many insurers use exception criteria that prevent the generation of an immediate quote. The use of exception criteria requires some applicants to send a signed standard automobile

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insurance application to the insurer's underwriting department for review. In these cases, it is usually many days or even weeks before the applicant receives a quote, by which time the applicant has usually decided to purchase insurance elsewhere.

These exception criteria are not consistent amongst insurers. The Superintendent has observed that when a few insurers expand exception criteria, other insurers that are concerned about attracting a disproportionate share of less-than-ideal business take similar action. The overall impact of this is the market fails to serve consumers' interests, which, in turn encourages consumers to make misrepresentations in order to obtain an automobile insurance quote.

In light of this, and the TAC Rule obligations on insurers to provide premium quotes, it is the Superintendent's interpretation that any formal or informal process, practice or procedure that makes it more difficult for an applicant/insured to interact with an insurer (including through its agents), and which discourages or delays an applicant from obtaining an auto insurance quote, is a contravention of the TAC Rule and section 509 of the Act. This interpretation does not include when an insurer slows or stops its quoting process in cases where:

1. An ACA is permitted under the TAC Rule or as set out in this Bulletin; or
2. A criterion or combination of criteria set out in the insurer's underwriting rules filed with Alberta's Automobile Insurance Rate Board, specifically disqualifies an applicant/insured from the insurer's immediate quoting process. However, the following criteria, even when included in the insurer's filed underwriting rules, may not be used to disqualify an applicant/insured from an immediate quote. This list is subject to review and revision on a periodic basis:
 - a. Credit score;
 - b. Not providing consent to a credit check;
 - c. Amount of time licensed;
 - d. A lapse in automobile insurance coverage;
 - e. When the applicant or insured uses a particular agent, agency, broker or brokerage;
 - f. When additional coverage, such as Section C coverage (collision or comprehensive), is requested or not;
 - g. When the applicant/insured is ineligible for additional PPV insurance coverage(s) not included in basic coverage. For additional clarity, an insurer may, pursuant to its filed underwriting rules, decline to offer additional coverage, but this ineligibility cannot be a reason to decline an immediate quote for basic coverage;
 - h. When a premium payment plan is requested;
 - i. Territory; and
 - j. Grid step/level or rating.

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When an insurer disqualifies the applicant/insured from receiving an immediate quote for basic PPV insurance, and instead, requires the applicant/insured to submit a completed SAF1, the insurer

1. must not require the applicant/insured to submit a paper application. In other words, if the applicant/insured wishes to transact insurance electronically, and if the insurer is capable of transacting insurance electronically, the insurer must accommodate the electronic transaction; and
2. must not require documents other than a completed SAF1 and, if applicable, an [Automobile Insurance Motor Vehicle Inspection Report](#). In other words, the insurer must not require the applicant/insured to submit documents such as a driver's abstract, or a non-standard application form, before providing a quote for PPV basic insurance coverage.

Timing and enforcement

Quoting process

All automobile insurers licensed in Alberta must comply with the quoting process requirements set out in this Bulletin by May 10, 2023. These requirements also apply to quotes insurers provide through on-line aggregators and by their agents/brokers. Implementation extensions will not be granted.

ACA based on ACAR amendments

Before an insurer takes any ACA based on the June 1, 2023 amendments to the ACAR, the insurer must first develop and adopt clear written underwriting rules pertaining to the ACAR amendments and their interpretations set out in this Bulletin. These rules must be reviewed and approved by the insurer's head office underwriting leadership and by the insurer's compliance and/or internal audit team. These rules do not need to be approved by the Superintendent; however, pursuant to Automobile Insurance Rate Board ("AIRB") [filing guidelines](#), they should be filed in AIRB's Collection and Reporting System on a "file and use" basis.

In all cases where an insurer takes ACA against an applicant or insured for fraud, the insurer must:

- consider compelling and credible facts it reasonably believes are true, correct or real,
- which are sufficient to make a reasonable person considering the matter objectively,
- to conclude, on balance of probabilities, the applicant or insured
 - has a history of fraudulent activity in relation to an automobile insurance policy as set out in 2.a. above; or
 - will use the automobile insurance policy or automobile for fraudulent purposes as set out in 2.b. above.

In the case of past fraud, the fraud must be documented and provable; however, it does not need to be proven in court.

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Records and requests

Declined immediate quotes

When an insurer declines to provide an immediate quote for basic PPV insurance, the insurer must maintain accurate records including at a minimum the following information:

1. Date immediate quote declined;
2. Name of applicant/insured;
3. Reason(s) for declining to provide an immediate quote;

Adverse Contractual Actions

Currently, insurers should have robust procedures in place to record information about their taken ACA. Beginning immediately, pursuant to sections 50 and 758 of the Act, when an insurer takes ACA on PPV automobile insurance policies, it must ensure it maintains accurate records including at minimum the following information:

1. Date of ACA;
2. Name of applicant/insured;
3. Type of ACA (**for basic coverages only**):
 - a. Insurer refused to process an application;
 - b. Insurer refused to provide a premium quotation;
 - c. Insurer refused to issue a contract;
 - d. Insurer refused to renew/continue a contract;
 - e. Insurer refused to provide/continue any coverage or endorsement; or
 - f. Insurer terminated or cancelled the contract;
4. The basis for taking ACA--the insured or the applicant:
 - a. Did not pay the premium;
 - b. Has premium arrears on another automobile insurance contract;
 - c. Failed to inform, when requested by insurer, who is the principal driver;
 - d. Failed to provide a completed approved vehicle inspection report on PPVs 12 model years or older;
 - e. Failed to complete the approved application form, SAF1;
 - f. Provided false information on the approved application form, SAF1;
 - g. Made any misrepresentation in the information provided for the purposes of obtaining, updating or renewing an automobile policy, including on the application form (if on a SAF1, record in 4.f. above);
 - h. Failed to submit any information required in the approved application form SAF1;
 - i. Has a history of fraudulent activity in relation to an automobile policy in the last seven years; or
 - j. Will, based on a reasonable belief, probably use the automobile insurance policy or the automobile for fraudulent purposes; and
5. The evidence supporting the basis for ACA.

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An insurer must maintain these records for at least three years following the declination of an immediate quote, or an ACA.

In addition, the Superintendent will work with automobile insurers to establish reporting requirements, under which insurers will report to the Superintendent on a periodic basis, information about ACA taken on the basis of fraud, as well as any other information or details that may be required by the Superintendent.

Penalties for non-compliance

Where the Superintendent is of the opinion that an insurer has contravened a prescribed provision of the Act or its regulations the Superintendent may require that insurer to pay an administrative penalty of up to \$25,000 for each contravention.

Alternatively, in place of an administrative penalty, and pursuant to section 780 of the Act, an insurer that contravenes section 509 or 555(3) of the Act is guilty of an offence and may be prosecuted. If convicted, an insurer is subject to a fine of up to \$200,000 under section 786 of the Act (and if the insurer's conduct is of a continuing nature, each day or part of a day constitutes a separate offence).

If you have any questions regarding this Bulletin, please contact my office at 780-643-2237 or tbf.insurance@gov.ab.ca.

[ORIGINAL SIGNED]

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