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c 18 Ontario Automobile Insurance Board Act, 1988

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CHAPTER 18

An Act to establish the Ontario Automobile Insurance Board and to provide for the Review of Automobile Insurance Rates

Assented to February 11th, 1988

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) In this Act,

"automobile insurance" has the same meaning as in section 1 of the Insurance Act, except that it does not include insurance for any motor vehicle or trailer that may be operated

R.S.O. 1980, c. 218
legally on a highway without a permit issued under section 7 of the *Highway Traffic Act* other than a motorized snow vehicle;

“Board” means the Ontario Automobile Insurance Board established under this Act;

“industry-wide hearing” means an industry-wide hearing required or permitted by Part II;

“insurers’ association” means an association of insurers whose purpose it is to advise its members on rates or to maintain statistical information on behalf of its members or on behalf of the Superintendent;

“insurer” means an insurer licensed under the *Insurance Act* and carrying on the business of automobile insurance but does not include an insurer whose licence is limited to contracts of reinsurance;

“Minister” means the Minister of Financial Institutions or such other member of the Executive Council as is designated by the Lieutenant Governor in Council to administer this Act;

“prescribed” means prescribed by the regulations;

“rate” means the amount payable under contracts of automobile insurance for an identified risk exposure whether expressed in dollar terms or in some other manner and includes commissions, surcharges, fees, discounts and rebates;

“regulations” means the regulations made under this Act;

“Superintendent” means the Superintendent of Insurance.

(2) The Facility Association established under the *Compulsory Automobile Insurance Act* shall be deemed to be a person for the purposes of this Act and any proceeding before the Board or a court under this Act may be instituted by or against it in its own name.

PART I

ONTARIO AUTOMOBILE INSURANCE BOARD

2. A board to be known as the Ontario Automobile Insurance Board is established.
3.—(1) The Board shall be composed of such number of members as the Lieutenant Governor in Council may appoint.

(2) The members of the Board shall be representative of insureds, the insurance industry and the public.

(3) The members of the Board who are not Crown employees shall be paid such remuneration and expenses as the Lieutenant Governor in Council determines.

4.—(1) One-half of the members of the Board constitutes a quorum of the Board.

(2) One-half of the members of a panel of the Board constitutes a quorum of the panel.

5.—(1) The Lieutenant Governor in Council shall appoint a member of the Board to be its chairperson and may appoint one or more other members as vice-chairpersons.

(2) The chairperson shall assign members of the Board to its various sittings.

(3) The vice-chairperson shall perform such duties as may be assigned to him or her under this Act and, if the chairperson is unable to act, the vice-chairperson may act as chairperson.

(4) If there is more than one vice-chairperson, the chairperson may designate one of them to act in the absence of the chairperson.

(5) The chairperson may designate one or more members of the Board to sit as a panel and may direct the panel to conduct any hearing or to authorize any inquiry, investigation or other proceeding that the Board itself could conduct or authorize.

(6) Despite subsection (5), the chairperson shall not appoint less than three members of the Board to a panel that conducts an industry-wide hearing.

6.—(1) If a member of the Board for any reason ceases to be a member, he or she may, with the consent of the chairperson, in connection with any matter in which the member participated as a member of the Board, carry out and complete any duties and responsibilities and exercise any powers that he or she would have had if he or she not ceased to be a member of the Board.
(2) Despite subsection 4 (2), if a member of the Board for any reason is unable to carry out and complete his or her duties, the Board and every panel of which he or she was a member may carry out and complete any duties and responsibilities and exercise any powers that it would have had had the member been able to carry out and complete his or her duties.

7.—(1) Such employees as are required for the purposes of the Board may be appointed under the Public Service Act.

(2) The Board may engage persons other than those appointed under subsection (1) to provide professional, technical or other assistance to the Board and may establish the duties and terms of engagement and provide for the payment of the remuneration and expenses of such persons.

8.—(1) No action or other proceeding for compensation or damages shall be instituted against the Board, its members or employees or persons appointed under subsection 7 (2) for any act done in good faith in the performance or intended performance of any duty or in the exercise or intended exercise of any power under this Act or the regulations or for any neglect or default in the performance or exercise in good faith of such duty or power.

(2) Despite subsections 5 (2) and (4) of the Proceedings Against the Crown Act, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

(3) Except with the consent of the Board, no member or employee of the Board and no person appointed under subsection 7 (2) shall be required to testify in any civil proceeding, in any proceeding before the Board or in any proceeding before any other tribunal respecting information obtained in the discharge of his or her duties or while acting within the scope of his or her employment under this Act.

9.—(1) The Board shall at the close of each fiscal year file with the Minister an annual report upon the affairs of the Board.

(2) The Board shall make such further reports and provide the Minister with such information as the Minister from time to time requires.
(3) The Minister shall submit the reports to the Lieutenant Governor in Council and lay them before the Assembly if it is in session or, if not, at the next session.

10.—(1) All expenses incurred and expenditures made by the Board in the conduct of its affairs shall, until the 31st day of March, 1988, be paid out of the Consolidated Revenue Fund and thereafter shall be paid out of the moneys appropriated therefor by the Legislature.

(2) The Lieutenant Governor in Council may assess all insurers with respect to any of the amounts appropriated under subsection (1) and not otherwise recovered and an insurer shall pay the amount assessed against it.

(3) Where an assessment is made under subsection (2), the share of a particular insurer shall be in the same proportion as the total gross premiums written by the insurer in Ontario for automobile insurance in its last preceding fiscal year bears to the total of all gross premiums written by all insurers in Ontario for automobile insurance in the last preceding fiscal year of each.

11.—(1) The Board shall adopt the most expeditious method of determining the questions on the merits arising in any proceeding.

(2) The Board shall give adequate public notice of its hearings to the public.

(3) The Board shall give notice of an industry-wide hearing to every insurer.

(4) The Board shall give notice of its hearings to the Superintendent.

(5) The parties to proceedings before the Board are,

(a) in the case of a review under section 24, the Facility Association and such other persons as give the Board written notice of their intention to participate as parties; and

(b) in any other case, the applicant, if any, and such other persons as give the Board written notice of their intention to participate as parties.

(6) Where an unincorporated association gives written notice of its intention to participate as a party to a proceeding before the Board, it shall thereafter be deemed to be a person.
for the purposes of the proceeding and it may be a party in its own name.

(7) Where two or more parties have a common interest in respect of an application to the Board, the parties may authorize one or more of those parties to represent all of them and any order made by the Board may be made applicable to all.

(8) The Superintendent, as a party or otherwise, is entitled at any time, by counsel or otherwise, to take part in proceedings before the Board or to take part in appeals from any order of the Board whether or not the Superintendent appeared at any hearing or portion of a hearing.

12.—(1) The Board may exercise such powers and shall perform such duties as are necessary to carry out its functions under this Act and without restricting the generality of the foregoing, it may,

(a) make rules for the conduct and management of its affairs and for the practice and procedure to be observed in matters before it;

(b) determine, with respect to any particular hearing, what constitutes adequate public notice;

(c) before or during a hearing, conduct any inquiry or inspection it considers necessary;

(d) if, in its opinion, additional information is required by the Board, order an insurer or insurers' association or the Facility Association to provide the information in the possession of the insurer, insurers' association or Facility Association, as the case may be;

(e) authorize any person, herein referred to as an inspector, to enter any place where an insurer or insurers' association or the Facility Association carries on business or keeps documents or things relating directly or indirectly to automobile insurance and to examine documents and things of the insurer, insurers' association or Facility Association, as the case may be, and make such inquiries as may be relevant;

(f) require an insurer or insurers' association or the Facility Association, to provide print-outs of any documents or other information stored by electronic
means unless the insurer, insurers' association or Facility Association, as the case may be, is able to provide to the Board a copy of the document or information in some other form that is acceptable to the Board; and

(g) in determining any matter, consider any relevant information obtained by it in addition to evidence given at a hearing, if it first informs the persons taking part in the proceedings of the additional information and gives them an opportunity to explain or refute it.

(2) Every insurer, every insurers' association and the Facility Association and their respective directors, officers and employees shall give all reasonable assistance to an inspector and shall answer all proper questions relating to the inquiry.

(3) An inspector for the purposes of carrying out his or her duties,

(a) may enter any place described in clause (1) (e);

(b) may request the production for inspection of documents or things that may be relevant to the carrying out of the examination or inquiry;

(c) upon giving a receipt therefor, may remove from a place documents or things produced pursuant to a request under clause (b) for the purpose of making copies or extracts and shall promptly return them to the person who produced them; and

(d) may question a person on matters that are or may be relevant to the carrying out of the examination or inquiry subject to the person's right to have counsel or some other representative present during the questioning.

(4) A person shall not exercise a power of entry conferred by this Act to enter a place that is being used as a dwelling without the consent of the occupier except under the authority of a warrant issued under this section.

(5) Where a justice of the peace is satisfied on evidence upon oath that there are in a place documents or things that there is reasonable ground to believe will afford evidence relevant to the carrying out of an examination or inquiry under this Act, the justice of the peace may issue a warrant in the prescribed form authorizing the person named in the warrant
to search the place for any such documents or things and to remove them for the purposes of making copies or extracts and they shall be returned promptly to the place from which they were removed.

(6) Where a justice of the peace is satisfied on evidence upon oath that there is reasonable ground to believe it is necessary that a place being used as a dwelling or to which entry has been denied be entered so that an inspector may carry out an examination or inquiry under this Act, the justice of the peace may issue a warrant in the prescribed form authorizing such entry by the person named in the warrant.

(7) A warrant issued under this section,

(a) shall specify the hours and days during which it may be executed; and

(b) shall name a date on which it expires, which date shall not be later than fifteen days after its issue.

(8) No person shall hinder, obstruct or interfere with an inspector in the execution of a warrant or otherwise impede an inspector in carrying out an inquiry.

(9) Subsection (8) is not contravened where a person refuses to produce documents or things, unless a warrant has been issued under subsection (5).

(10) Copies of, or extracts from, documents and things removed from premises under this Act and certified by the person who made the copies as being true copies of, or extracts from, the originals are admissible in evidence to the same extent as, and have the same evidentiary value as, the documents or things of which they are copies or extracts.

(11) No document or thing or copy thereof or extract therefrom in the possession of an inspector shall be introduced in evidence in any proceeding before the Board unless the owner of the document or thing is first given notice of the intent to introduce it into evidence.

13.—(1) The Board shall determine matters before it by order.

(2) The Board may make an order subject to such conditions as are set out in the order.

(3) Without restricting the generality of subsection (2), the Board may provide in an order that the order does not come
into effect until the performance, to the satisfaction of the Board or of a person named by it for the purpose, of any conditions that the Board may impose.

(4) The Board may make interim orders pending the final decision of a matter before it, but no interim order shall be made that leads to an increase in a premium under a contract of automobile insurance unless the hearing on the matter has commenced.

(5) Where, under subsection (4), the Board makes an interim order that leads to an increase in a premium under a contract of automobile insurance, and the final order of the Board leads to a decrease in the premium payable under the interim order, an insurer shall refund to its policyholder the amount of any premium overpayment retroactive to the day that the increase took effect under the interim order.

(6) An order of the Board shall be deemed to be sufficiently made if it is signed by a member or by an employee of the Board designated by the Board to sign orders on its behalf.

(7) The Board shall provide the Superintendent with a copy of every order made by it forthwith after making the order.

(8) The Board shall provide each insurer with a copy of every order that results from an industry-wide hearing forthwith after making the order.

14.—(1) The Board has exclusive jurisdiction to exercise the powers conferred upon it by or under this Act and to determine all questions of fact or law that arise in any matter before it and, subject to section 18, its action or decision thereon is final and conclusive for all purposes.

(2) The Board may at any time, if it considers it advisable to do so, reconsider any order or decision made by it and confirm, vary or revoke the order or decision and in reconsidering any order or decision, it may restrict the reconsideration to such issues as it considers appropriate.

15. Upon payment of the prescribed fee, if any, any person, during the normal office hours of the Board, may,

(a) examine material filed with the Board for the purpose of a hearing;

(b) examine rates filed with the Board by an insurer;
(c) examine a copy of any decision, order or reasons made or given by the Board; and

(d) obtain copies of any such material, rates, decision, order or reasons.

Costs

16.—(1) The costs of and incidental to any proceeding before the Board are in its discretion and may be fixed in any case at a sum certain or may be assessed.

(2) The Board may order by whom and to whom any costs are to be paid and by whom they are to be assessed and allowed.

(3) The Board may establish a scale under which such costs shall be assessed.

(4) Costs awarded under this section may include the costs of the Board, regard being had to the time and expenses of the Board.

Stated case

17.—(1) The Board may, at the request of the Minister, or of its own motion, or upon the application of any party, and upon such security being given as it directs, state a case in writing for the opinion of the Divisional Court upon any question that, in the opinion of the Board, is a question of law.

(2) The Divisional Court shall hear and determine the stated case and remit it to the Board with the opinion of the Court thereon.

Appeal to Divisional Court

18.—(1) An appeal lies to the Divisional Court from any order of the Board upon a question of law or jurisdiction, but no such appeal lies unless leave to appeal is obtained from the Court within thirty clear days of the making of the order sought to be appealed from or within such further time as the Court under the special circumstances of the case allows.

(2) The Board and the Superintendent are entitled to be heard by counsel or otherwise upon the argument of any such appeal.

(3) The Divisional Court shall certify its opinion to the Board and the Board shall make an order in accordance with such opinion, but in no case shall such order be retroactive in its effect.

(4) The Board is not liable for costs in connection with any appeal or application for leave to appeal under this section.
(5) An order of the Board takes effect at the time set out in the order, and its operation is not suspended by an appeal unless the Court otherwise orders.

PART II

RATE AND DIVIDEND REVIEW

19.—(1) The Lieutenant Governor in Council may prescribe the classes of risk exposures that may be considered in determining the premiums for coverages for different categories of automobile insurance and the procedures to be followed in assigning insureds and vehicles to any such class of risk exposure.

(2) Subsection (1) is amended on a day to be named by proclamation of the Lieutenant Governor by striking out "Lieutenant Governor in Council" in the first line and inserting in lieu thereof "Board, by order, following an industry-wide hearing".

20.—(1) Upon classes of risk exposure being prescribed for a category of automobile insurance, the Board, following an industry-wide hearing, shall set a rate or range of rates with respect to each such class of risk exposure.

(2) The Board may hold industry-wide hearings to review any rates or range of rates set by it and following such a hearing may vary any such rate or range of rates.

(3) A rate or range of rates set by the Board may be expressed in dollar terms or in such other manner as the Board considers appropriate so that a person may determine the rate or range of rates for each class of risk exposure.

(4) In setting a rate or range of rates, the Board shall set a rate or range of rates that in the opinion of the Board is just and reasonable and not excessive or inadequate.

(5) An industry-wide hearing shall be on the motion of the Board or on request of the Minister.

(6) The Board in its discretion may consider at any one hearing the rate or range of rates for such class or classes of risk exposure for such category or categories of automobile insurance as it considers appropriate.

(7) In determining rates or ranges of rates, the Board may consider any financial or other matter directly or indirectly affecting rates.
(8) The Board may, for the purposes of an industry-wide hearing, publish proposed rates or ranges of rates prepared by such person or persons as may be designated by the Board for any class or classes of risk exposures for any category or categories of automobile insurance and the Board shall make copies thereof available to the public without charge.

(9) The Board shall establish a procedure to give notice to the public of proposed rates or ranges of rates and to receive written submissions from the public in lieu of or in addition to any participation in a hearing.

(10) Before the commencement of an industry-wide hearing, the Board, after giving the parties an opportunity to be heard, may identify the issues that in its opinion are to be determined at the industry-wide hearing.

(11) A rate or range of rates set by the Board takes effect 120 days after the Board makes its order setting the rate or range of rates unless the Board otherwise orders.

(12) Despite subsection (11), an insurer may, by notice in writing to the Board, decide that the rate or range of rates set by the Board takes effect with respect to it on such day that is at least sixty days and less than 120 days after the Board's order as may be set out in the notice.

(13) If the Board under subsection (2) establishes a new rate or range of rates, all approvals of rates previously given under sections 22, 23 and 24 for that class of risk exposure shall be deemed to be revoked on the day the new rate or ranges of rates takes effect.

(14) Subsection (2) is repealed on a day to be named by proclamation of the Lieutenant Governor and the following substituted therefor:

(1a) The Board may hold industry-wide hearings for the purpose of reviewing either or both the classes of risk exposure for different categories of automobile insurance and the rates or ranges of rates set by it.

(2) Following an industry-wide hearing at which a rate or range of rates set by it is considered, the Board may vary the rate or range of rates and where classes of risk exposure are considered, it may vary the classes.

and on that day the following subsection is added to this section:
(5a) Any person may apply to the Board for changes in the classes of risk exposure, and where the Board, in its absolute discretion, is of the opinion that it would be in the public interest to consider the proposed changes, the Board shall hold an industry-wide hearing to review the proposed changes in the classes of risk exposure and the rates or ranges of rates with respect to the changes in the classes of risk exposure.

(15) An industry-wide hearing commenced before the date named in the proclamation under subsection (14) shall be completed and the Board may make orders following the hearing as if this section had not been amended by that subsection.

21.—(1) Unless otherwise permitted under this Act, no insurer shall,

(a) determine rates for any category of automobile insurance except on the basis of the prescribed classes of risk exposure for that category; or

(b) charge any rate other than,

(i) a rate that has been approved by the Board under section 22 or 23 in relation to that insurer, or

(ii) a rate that may be charged under the Plan of Operation of the Facility Association under the Compulsory Automobile Insurance Act where the contract has been submitted to the insurer under that Act.

(2) Subsection (1) does not apply to an insurer with respect to a particular category of automobile insurance until the rates or ranges of rates with respect to the prescribed classes of risk exposure for that category have been set by the Board and have taken effect.

(3) Where an insurer writes contracts of automobile insurance that are not within a category of automobile insurance for which the rates or ranges of rates have been set under section 20, the insurer shall not charge any rate in respect of a coverage under such a contract that exceeds,

(a) the capped rate for the coverage where no order has been made under this section; or

(b) the rate set out in an order made under this section where such an order has been made.
(4) An insurer may apply to the Board for an order to increase any of its capped rates in respect of coverages referred to in subsection (3) and the Board may approve the increase if the insurer demonstrates that,

(a) the circumstances of the insurer justify the increase; and

(b) the resulting rate is just and reasonable and not excessive.

(5) The Board, in lieu of approving an increase of a capped rate, may reject or vary the rates proposed by the applicant having regard to the criteria set out in clauses (4) (a) and (b) and, if it is of the opinion that a capped rate that is the subject of the application is excessive, it may reduce the capped rate.

(6) Where permitted by the regulations, an insurer may increase its capped rates by an amount that does not exceed the prescribed percentage.

(7) Where an insurer was not providing a coverage on the 23rd day of April, 1987 but subsequently provides the coverage, the capped rate for the coverage is,

(a) with respect to a coverage described in clause (a) of the definition of "capped rate" in subsection (8), the premium that would have been charged for the coverage for comparable risks for a term commencing on the 23rd day of April, 1987 had the premium been calculated using the Facility Association rate in effect on that date; and

(b) with respect to a coverage described in clause (b) or (c) of the said definition, 90 per cent of the premium described in clause (a) of this subsection.

(8) In this section,

"capped rate" means,

(a) in the case of any coverage under a contract of automobile insurance, other than a coverage provided through the Facility Association or a coverage to which clause (b) or (c) applies, the lesser of,

(i) the premium that would have been charged for the coverage for comparable risks for a term commencing on the 23rd day of April, 1987 had the premium been calculated using
the rules, procedures and factors used by the insurer on that date, and

(ii) the premium that would have been charged for the coverage for comparable risks for a term commencing on the 23rd day of April, 1987 had the premium been calculated using the Facility Association rate in effect on that date,

(b) in the case of a premium for any coverage determined in whole or in part on the basis that an insured under the contract is a male under the age of twenty-five years,

(i) 90 per cent of the premium described in subclause (a) (ii) if the insured is insured through the Facility Association,

(ii) 90 per cent of the lesser of the premiums described in subclauses (a) (i) and (ii) if the insured is not insured through the Facility Association,

(c) in the case of a premium for any coverage determined in whole or in part on the basis that an automobile insured under the contract is a taxi, the lesser of,

(i) the premium described in subclause (a) (i),

and

(ii) 90 per cent of the premium described in subclause (a) (ii);

"Facility Association rate" means the premium for a coverage determined under the Plan of Operation of the Facility Association under the Compulsory Automobile Insurance Act;

"insured" means an insured as defined in section 201 of the Insurance Act.

(9) A reference in this section to "capped rate" shall be deemed to include a reference to a capped rate as determined by the Board under subsections (4) and (5) and to a capped rate as increased under subsection (6).

22.—(1) An insurer that intends to charge the rate set under section 20 or a rate within the range of rates set under
that section for a class of risk exposure shall apply to the Board for approval of the rate it intends to charge.

Timing

(2) An application shall be made under subsection (1),

(a) within thirty days of an order being made under section 20 setting a rate or range of rates;

(b) before varying any rate previously approved by the Board, where the rate, when varied, will be within the range of rates set out under section 20; and

(c) before entering any contract of automobile insurance with respect to which a rate or range of rates has been set under section 20, where the insurer was not writing contracts that covered that class of risk exposure at the time the rate or range of rates was set.

Statutory declaration

(3) An application under subsection (1) shall be accompanied by the statutory declaration of an officer of the insurer declaring that the proposed rate is the same as the rate set by the Board or is within the range of rates set by the Board, as the case may be.

Extension of time

(4) On the application of the insurer made not less than three days that are not a Saturday or holiday before the expiry of the thirty-day period referred to in clause (2) (a), the Board may extend the period for a period not exceeding thirty days.

Idem

(5) Where an application is received under subsection (4), the Board shall be deemed to have approved the application unless it holds a hearing in respect of the application before the expiry of the thirty-day period referred to in clause (2) (a).

Late filing

(6) The Board shall accept applications received by it under subsection (1) after the expiry of a limitation period prescribed by this section but such acceptance does not relieve an insurer from prosecution under this Act.

Approval

(7) An application under subsection (1) shall be deemed to have been approved by the Board twenty days after its filing unless the Board within that twenty-day period advises the applicant orally or otherwise that it has not approved the application because the Board is of the opinion that the rate is not the same as the rate set by the Board under section 20 or within the range of rates set under that section.
(8) Where the Board advises an applicant orally that it has not approved an application under subsection (1), it shall forthwith mail a written notice to the insurer confirming that fact.

(9) Where the Board notifies an insurer that it has not approved an application under subsection (1), it shall hold a hearing.

(10) Although an application may be deemed to have been approved under subsection (7), if the Board is subsequently of the opinion that the rate is not the same as the rate set under section 20 or within the range of rates set under that section, the Board shall hold a hearing into the matter.

(11) Following a hearing under subsection (9) or (10), the Board may approve the application or it may vary the rate to the rate set under section 20 or to a rate within the range of rates set under that section and the rate as so varied shall be deemed to be a rate approved under this section.

(12) The Board may waive public notice with respect to a hearing under this section.

23.—(1) Where an insurer wishes to charge a rate for a class of risk exposure other than a rate to which section 22 applies, the insurer shall apply to the Board for approval of the rate.

(2) Except as provided in subsections (3) and (5), the Board shall hold a hearing with respect to applications under subsection (1).

(3) Where all of the rates included in an application under subsection (1) are below the rates or ranges of rates set under section 20, the application shall be deemed to have been approved by the Board thirty days after its filing, unless the Board within that thirty-day period advises the applicant orally or otherwise that it has not approved the application because the Board is of the opinion that,

(a) it is in the public interest to hold a hearing on the application; or

(b) the Board does not have sufficient information upon which to make a decision concerning the application.

(4) Where the Board advises an applicant orally that it has not approved an application referred to in subsection (3), it
shall forthwith mail a written notice to the insurer confirming that fact.

(5) Where the Board advises an applicant that it has not approved an application referred to in subsection (3) because of insufficient information, the Board in its discretion may permit the insurer to file additional information within a specified period and it may extend the thirty-day period accordingly.

(6) Following a hearing required by this section, the Board may approve the application or it may reject or vary the proposed rate and the rate so varied shall be deemed to be a rate approved under this section.

(7) The Board may waive public notice with respect to a hearing under this section.

(8) Where an insurer applies for the approval of any rate under this section, the insurer must demonstrate that the proposed rate is just and reasonable and not excessive or inadequate and that the circumstances of the insurer justify the use of the proposed rate.

(9) Despite subsection 20 (13), where an application is made under this section, the insurer, until the Board makes its decision with respect to the application, may continue to charge the rate for the class of risk exposure to which the application relates that it was charging immediately before the application was filed with the Board or it may charge a lower rate.

(10) Where the rate approved by the Board under this section is less than the rate charged by the insurer, as permitted by subsection (9), the Board's approval may be made retroactive to the date the application was filed with the Board or such later date as the Board may determine and, if the order is retroactive, the insurer shall reimburse its policyholders for any excess of premiums.

24.—(1) Subject to subsection (12) but despite any other provision of this Act or the regulations, the Facility Association shall not promulgate any rate in respect of contracts of automobile insurance provided under the Plan of Operation under the Compulsory Automobile Insurance Act that has not been set or approved by the Board under this section.

(2) The Facility Association shall apply to the Board for approval of rates prepared by it under section 10 of the Compulsory Automobile Insurance Act.
(3) The Board of its own motion may, and at the request of the Minister shall, review rates in respect of contracts of automobile insurance provided under the Plan of Operation under the Compulsory Automobile Insurance Act and, following a hearing, may set rates that it considers to be just and reasonable and not excessive or inadequate in respect of such contracts.

(4) Where a rate or range of rates is set under section 20 for a class of risk exposure, all rates in respect of that class promulgated by the Facility Association before the coming into force of this section or set under subsection (3) shall be deemed to be revoked on the day the rate or range of rates takes effect.

(5) Where a rate will be revoked under subsection (4) or an approval will be revoked under subsection 20 (13), the Facility Association, within thirty days of an order being made under section 20 setting a rate or range of rates, shall prepare and apply to the Board for approval to promulgate a rate that,

(a) is the rate set under section 20 or is a rate within the range of rates set under that section; or

(b) is not a rate to which clause (a) applies.

(6) The Facility Association may at any time apply to the Board for the variation of any rate previously promulgated by it.

(7) Subsections 22 (3) to (12) apply with necessary modifications to the approval of a rate to which clause (5) (a) applies.

(8) Where an application is made under this section and subsections 22 (3) to (12) do not apply to the application,

(a) the Facility Association must demonstrate that the proposed rate is just and reasonable and not excessive or inadequate;

(b) the Board may approve, reject or vary the proposed rate.

(9) Despite subsection 20 (13), if the Facility Association makes an application under clause (5) (b) or applies to vary a rate approved in an application under clause (5) (a) so that the rate will no longer be the rate set under section 20 or within the range of rates set under that section, the rates for the class of risk exposure to which the application relates that
were in effect under the Plan of Operation immediately before the application continue in effect until the Board makes its decision.

(10) Where the Facility Association makes an application described in subsection (8) and the Board approves a rate that is less than the rate continued in effect under subsection (9), the Board's approval may be made retroactive to the date the application was filed with the Board or such later date as the Board may determine and, if the order is retroactive, an insurer shall reimburse its policyholders for any excess of premiums.

(11) The Facility Association shall promulgate rates set or approved under this section forthwith after they are approved or set.

(12) Subject to subsection (4), rates promulgated by the Facility Association under section 10 of the Compulsory Automobile Insurance Act before the coming into force of the section continue in force until they are varied in accordance with this section.

25.—(1) No insurer shall issue a dividend in respect of a contract of automobile insurance unless the dividend has been approved by the Board.

(2) Where an application is made under this section, the Board may approve, reject or vary the proposed dividend.

(3) Where an insurer applies for the approval of a dividend under this section, the insurer must demonstrate that the proposed dividend is just and reasonable and not excessive and that the circumstances of the insurer justify the proposed dividend.

(4) The Board may dispense with a hearing with respect to an application under this section.

PART III

ENFORCEMENT, REGULATIONS AND MISCELLANEOUS

26.—(1) Every person who contravenes or fails to comply with this Act, the regulations or an order of the Board is guilty of an offence and on conviction is liable to a fine of not more than $25,000, in the case of an individual, and not more than $100,000, in any other case.
(2) If a corporation or the Facility Association contravenes or fails to comply with this Act, the regulations or an order of the Board, every officer or director thereof who authorizes, permits or acquiesces in the contravention is a party to and guilty of the offence and, on conviction, is liable to the penalty provided for the offence whether or not the corporation or Facility Association, as the case may be, has been prosecuted or convicted.

(3) No prosecution for an offence under this Act shall be instituted except with the consent in writing of the Board.

(4) No proceeding for an offence under this Act shall be commenced in any court more than two years after the facts upon which the proceedings are based first came to the knowledge of the Board.

27.—(1) The Superintendent, with the approval of the Lieutenant Governor in Council, may issue policy statements on matters related to categories of automobile insurance, classes of risk exposure and automobile insurance rates and dividends.

(2) A policy statement takes effect on the day it is published in The Ontario Gazette.

(3) In making orders under this Act, the Board shall have regard to the policy statements issued under this section.

28. The Lieutenant Governor in Council may require the Board to examine and report on any question related to automobile insurance that, in the opinion of the Lieutenant Governor in Council, requires a public hearing.

29.—(1) The Lieutenant Governor in Council may make regulations,

(a) prescribing classes of risk exposure and categories of automobile insurance for the purposes of this Act;

(b) prescribing types of contracts of automobile insurance and types of endorsements to contracts of automobile insurance to which Part II applies;

(c) prescribing procedures to be followed in assigning insureds and vehicles to a class of risk exposure;
(d) prescribing the manner of gathering statistics and other information in relation to automobile insurance;

(e) prescribing information to be filed with the Board by insurers and insurers' associations and the Facility Association, the time or times at which the information is to be filed and requiring that the accuracy of the information be certified by an actuary or an accountant as may be appropriate;

(f) prescribing fees payable with respect to proceedings before the Board and with respect to the fees referred to in section 15;

(g) exempting insurers from the requirements of Part II in respect of such categories of automobile insurance, such coverages or such classes of risk exposure as may be set out in the regulations;

(h) permitting insurers to increase their capped rates as defined in subsection 21 (8) by such percentage as is set out in the regulations;

(i) prescribing forms including affidavits and statutory declarations and providing for their use;

(j) authorizing the Board, following a hearing by the Board, to approve risk management programs for one or more policyholders within such class or classes of policyholders as may be named in the regulations.

(2) A regulation made under clause (1) (h) may be made retroactive to the 1st day of January, 1988.

(3) On a day to be named by proclamation of the Lieutenant Governor,

(a) subsection (1) is amended by striking out clauses (a), (b), (c), (g) and (h); and

(b) subsection (2) is repealed and the following substituted therefor:

(1a) The Board, by order, may make regulations,

(a) prescribing classes of risk exposure and categories of automobile insurance for the purposes of this Act;
(b) prescribing procedures to be followed in assigning insureds and vehicles to a class of risk exposure;

(c) prescribing types of contracts of automobile insurance and types of endorsements to contracts of automobile insurance to which Part II applies;

(d) exempting insurers from the requirements of Part II in respect of such categories of automobile insurance, such coverages or such classes of risk exposure as may be set out in the regulations.

(2) Regulations made under clauses (1) (a), (b), (c) and (g), and section 19, as they read before the coming into force of this subsection, continue in force until remade or revoked by the Board.

30.—(1) The Regulations Act does not apply to rules made under clause 12 (1) (a) or to orders of the Board.

(2) A regulation made by the Board under section 19 or 29 does not come into force until it is published in The Ontario Gazette or until such date following the publication as is set out in the regulation.

(3) Subsection (2) comes into force on the day named in the proclamation under subsection 29(3).

31. In the event of conflict between this Act and any other Act, except the Human Rights Code, 1981, this Act prevails.

32.—(1) Subsections 10 (3) to (13) of the Compulsory Automobile Insurance Act, being chapter 83 of the Revised Statutes of Ontario, 1980, are repealed and the following substituted therefor:

(3) The Association may prepare rates in respect of contracts provided under the Plan.

(4) Rates prepared under subsection (3) do not come into effect until approved by the Ontario Automobile Insurance Board.

(2) Clause 15 (d) of the said Act is repealed.

33.—(1) No insurer shall differentiate or make a distinction, exclusion or preference in a contract of automobile insurance on the basis of age, sex, marital status, family status or handicap.
(2) Subsection (1) comes into force on the day named in the proclamation under subsection 29(3).

34. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

35. The short title of this Act is the *Ontario Automobile Insurance Board Act, 1988*. 