

Bill No. 85 of 1947.

**A BILL RESPECTING ACCIDENTS ARISING OUT OF
THE OPERATION OF MOTOR VEHICLES
AND PROVISIONS PROVIDING
INDEMNITY THEREOF**

NOTE

This Bill proposes the enactment of a new Act, the main feature of which is the provision for an unsatisfied judgment fund established by section 7.

Section 4 provides that in all cases of accident in which a motor vehicle is involved, and in which personal injury or death or property damage exceeding twenty-five dollars results, the Minister shall suspend the license of the driver, that is his driver's license or chauffeur's license, as the case may be, except where the only damage resulting from the accident is to the person or property of the driver or where the driver produces proof of financial responsibility. The license, if suspended, remains suspended, subject to the above exceptions, until the driver or chauffeur complies with one of the conditions set out in subsection (4) of section 4. Subsection (5) provides for cases where after the lapse of a year no claim has been asserted against the driver.

The unsatisfied judgment fund established by section 7 is raised by an addition to the fee for registration of a motor vehicle of a sum to be fixed by the Lieutenant Governor in Council not exceeding one dollar. Any person who has recovered judgment for damages in excess of one hundred dollars resulting from bodily injury caused by the operation or use of a motor vehicle, and is unable to collect it from the defendant, may apply to a judge of the Supreme Court for payment out of the fund. The procedure and necessary material are set out in section 8. The maximum amount payable out of the fund is five thousand dollars for injury to or death of one person and ten thousand dollars for two or more persons injured in one accident.

Section 9 provides a procedure for cases where a person is injured or killed by a "hit and run" driver where the name of the driver is not ascertainable.

Section 12 provides that where money has been paid out of the fund in payment of or on account of a judgment against a driver or chauffeur his license will not be reinstated until he has repaid to the fund that amount and given proof of financial responsibility.

Section 13 provides for the payment out of the fund of hospital expenses to persons injured in motor vehicle accidents unless they are covered by insurance which provides for payment of such hospital expenses. This does not apply where the person was solely to blame himself for the accident.

W. S. GRAY,
Legislative Counsel.

(This note does not form any part of the Bill but is offered in explanation of its provisions.)

BILL

No. 85 of 1947.

An Act Respecting Accidents Arising out of the Operation
of Motor Vehicles and Provisions Providing
Indemnity Therefor.

(Assented to , 1947.)

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

SHORT TITLE.

1. This Act may be cited as "*The Automobile Accident Indemnity Act.*"

INTERPRETATION.

2. In this Act, unless the context otherwise requires,—

- (a) "License" means a driver's license or a chauffeur's license issued pursuant to the provisions of *The Vehicles and Highway Traffic Act* or *The Public Service Vehicles Act*;
- (b) "Minister" means the Provincial Secretary except in so far as any of the provisions of this Act apply or relate to the registration of public service vehicles and commercial vehicles within the meaning of *The Public Service Vehicles Act*, in which cases "Minister" means the Minister of Public Works;
- (c) "Motor vehicle" means every vehicle propelled by any power other than muscular power, except traction engines and such motor vehicles as run only upon rails or tracks;
- (d) "Registration" includes registration under *The Vehicles and Highway Traffic Act* and the issue of a certificate or permit under *The Vehicles and Highway Traffic Act* or *The Public Service Vehicles Act*, and "registered" shall have a similar meaning;
- (e) "Superintendent" means the Superintendent of Insurance as defined in *The Alberta Insurance Act*.

3. The Provincial Secretary shall be the Minister charged with the administration of this Act.

SUSPENSION OF LICENSES IN CASE OF ACCIDENT.

4.—(1) Subject to subsections (2) and (3), where bodily injury to, or the death of, any person or damage to property

in amount apparently exceeding twenty-five dollars, results from an accident in which a motor vehicle is in any manner, directly or indirectly involved, the Minister on receipt by him of notice in writing of the accident, shall suspend the license of the driver of the motor vehicle.

(2) Subject to the provisions of section 124 of *The Vehicles and Highway Traffic Act*, where a person whose license is subject to suspension under this section satisfies the Minister that the only damage resulting from the accident is to the person or property of the driver, if the suspension has not already become effective the Minister shall not suspend the license, and if it has become effective he shall reinstate the license suspended.

(3) Where a person whose license is subject to suspension under this section produces to the Minister proof of financial responsibility in one of the forms prescribed in section 129 of *The Vehicles and Highway Traffic Act* if the suspension has not already become effective the Minister shall not suspend the license, and if it has become effective he shall reinstate the license so suspended.

(4) Subject to subsections (2) and (3), every license suspended pursuant to subsection (1) shall remain so suspended, nor shall any new license be issued to the person whose license has been so suspended until that person,—

- (a) gives security, sufficient in the opinion of the Superintendent to satisfy any judgment that may thereafter be recovered against such person as a result of the accident, or any sum that may be agreed upon between the parties as liquidated damages, but subject to the limits as to amount stated in section 5; or
- (b) produces proof satisfactory to the Superintendent that he has satisfied all claims against him for damages for bodily injury to, or the death of, any person, or for damage to property in an amount exceeding twenty-five dollars, resulting from the accident, up to the limits as to amount stated in section 5; and
- (c) gives proof of financial responsibility pursuant to section 129 of *The Vehicles and Highway Traffic Act*.

(5) Where,—

- (a) one year has elapsed since the date of an accident and the person whose license has been so suspended,—
 - (i) has neither paid nor agreed to pay any sum as damages in respect of bodily injury to, or the death of, any person, or any sum exceeding twenty-five dollars for damages to property, resulting from the accident;
 - (ii) has not been named as defendant in an action for damages as a result of the accident; and

- (iii) is not required to give proof of financial responsibility under the provisions of *The Vehicles and Highway Traffic Act*, or of this Act; or where
- (b) judgment in an action for damages resulting from the accident brought against such person has been given in his favour, and he is not required to give proof of financial responsibility under the provisions of *The Vehicles and Highway Traffic Act* or of this Act;

in either case the Superintendent shall return to him any security given by him pursuant to subsection (4).

5. Where security is required to be given by any person pursuant to paragraph (a) of subsection (4) of section 4, it shall be given by him to the Superintendent in the amount required by the Superintendent, but not in any case exceeding five thousand dollars in respect of loss or damage resulting from bodily injury to or the death of one person in any one accident, and not exceeding ten thousand dollars in respect of loss or damage resulting from bodily injury to or the death of two or more persons in any one accident, and one thousand dollars in respect of damage to property in any one accident.

6. Where security is given by any person pursuant to paragraph (a) of subsection (4) of section 4, the Superintendent shall issue a certificate that the person named therein has deposited with him the sum of money fixed by the Superintendent, or security for money approved by the Superintendent, and upon production of said certificate to the Minister he shall reinstate the suspended license.

UNSATISFIED JUDGMENT FUND.

7.—(1) Subject to subsections (2) and (4), the owner of each motor vehicle registered under *The Vehicles and Highway Traffic Act* and *The Public Service Vehicles Act* shall, at the time of registering the same in each year, pay to the Minister in addition to the fees for which provision is made under the provisions of *The Vehicles and Highway Traffic Act* or *The Public Service Vehicles Act*, a fee of such amount as may be fixed by order of the Lieutenant Governor in Council, but not exceeding one dollar for each such registration.

(2) Where the owner of a motor vehicle who has paid a fee in respect of the vehicle as required by subsection (1) has the number plate assigned to a second motor vehicle owned by him, he shall not be required to pay a fee under subsection (1) in respect of the vehicle to which the number plate is assigned.

(3) The fees paid pursuant to subsection (1) shall constitute a fund, which shall be known as "The Unsatisfied Judgment Fund" and is hereinafter referred to as "the fund."

(4) The Minister shall pay to the Provincial Treasurer the fees collected for the fund pursuant to subsection (1); and the fund shall be held by the Provincial Treasurer pursuant to *The Treasury Department Act* as part of the General Revenue Fund in a special account to be known as "The Unsatisfied Judgment Fund Account".

(5) Any portion of the fund remaining unexpended at the end of a fiscal year shall be carried forward to the credit of the fund in the next fiscal year.

8.—(1) Where any person recovers in any court in the province a judgment for an amount exceeding one hundred dollars, exclusive of costs, in an action for damages resulting from bodily injury to, or the death of, any person occasioned by, or arising out of, the operation or use of a motor vehicle by the judgment debtor, upon the determination of all proceedings including appeals and upon notice to the Superintendent, such judgment creditor may, in accordance with the Rules of the Supreme Court of Alberta apply by way of originating notice to a judge of the Supreme Court of Alberta for an order directing payment of the judgment out of the fund as hereinafter provided.

(2) Upon the hearing of the application the applicant shall show, —

- (a) that he has obtained a judgment as set out in subsection (1), stating the amount thereof and the amount owing thereon at the date of the application;
- (b) that he has caused to be issued a writ of execution; and that,—
 - (i) the sheriff or bailiff has made a return showing that no goods of the judgment debtor liable to be seized in satisfaction of the judgment debt could be found; or
 - (ii) the amount realized on the sale of goods seized, or otherwise realized, under the writ was insufficient to satisfy the judgment (stating the amount so realized and the balance remaining due on the judgment after application thereon of the amount realized);
- (c) that he has caused the judgment debtor to be examined, pursuant to the law for that purpose provided, touching his estate and effects and his property and means, and in particular as to whether the judgment debtor is insured under a policy of insurance insuring him against liability for loss or damage resulting from bodily injury to or the death of another person caused by the use or operation of a motor vehicle;
- (d) that he has made searches and inquiries to ascertain whether the judgment debtor is possessed of assets, real or personal, liable to be sold or applied in satisfaction of the judgment; and
- (e) that, by such searches, inquiries, and examination,—

- (i) he has learned of no assets, real or personal, possessed by the judgment debtor and liable to be sold or applied in satisfaction of the judgment debt; or
- (ii) he has learned of certain assets (describing them) owned by the judgment debtor and liable to be seized or applied in satisfaction of the judgment and has taken all necessary actions and proceedings for the realization thereof, and that the amount thereby realized was insufficient to satisfy the judgment (stating the amount so realized and the balance remaining due on the judgment after application of the amount realized);

(3) The Superintendent may appear personally or by counsel and be heard on the application and may show cause why the order should not be made.

(4) If the judge is satisfied,—

- (a) of the truth of the matters shown by the applicant as required by subsection (2); and
- (b) that the applicant has taken all reasonable steps to learn what means of satisfying the judgment are possessed by the judgment debtor; and
- (c) that there is good reason for believing that the judgment debtor,—
 - (i) has insufficient assets liable to be sold or applied in satisfaction of the judgment or of the balance owing thereon; and
 - (ii) is not insured under a policy of insurance by the terms of which the insurer is liable to pay, in whole or in part, the amount of the judgment; or
 - (iii) if insured as aforesaid, has applied the amount of insurance collectible under the policy on the judgment debt;

the judge may make an order directed to the Provincial Treasurer requiring him, subject to subsections (5), (6) and (7), to pay from the fund the amount of the judgment or the balance owing thereon, and subject, as hereinafter provided, the Provincial Treasurer shall comply with the order.

(5) An order made under subsection (4) shall be subject to appeal by the applicant or by the Superintendent as provided in *The Judicature Act* and the Rules of the Supreme Court of Alberta.

(6) The Provincial Treasurer shall not be required to pay from the fund under an order,—

- (a) in the case of a judgment resulting from bodily injury to, or the death of, one person in one accident, more than five thousand dollars exclusive of costs; and
- (b) in the case of a judgment resulting from bodily injury to, or the death of, more than one person in one

accident, and subject to such limit of five thousand dollars for each person so injured or killed, more than ten thousand dollars, exclusive of costs.

(7) The Provincial Treasurer shall not be required to pay from the fund under an order for costs of an action including the costs of any appeal and of the application made under this section, more than the actual disbursements incurred and one-half of the fees payable in respect of the action and appeals therein, and of the application, as taxed on a party and party basis.

9.—(1) Where bodily injury to or the death of any person is occasioned by or arises out of the operation or use of a motor vehicle, and the name of neither the owner nor the driver of the motor vehicle is known or ascertainable, the person injured, or in the case of death, the personal representative of the deceased, may commence an action against the Superintendent as a nominal defendant for the damages sustained.

(2) The action shall be commenced and carried on in accordance with the provisions of *The Judicature Act* and the Rules of Court.

(3) If as a result of the action the person injured, or in the case of death, the personal representative of the deceased, recovers judgment against the nominal defendant for damages in an amount exceeding one hundred dollars, exclusive of costs, he may apply to a judge of the Supreme Court for an order directing payment of the judgment out of the fund, and the provisions of section 8 so far as applicable shall, *mutatis mutandis*, apply to the proceedings on the application.

10. The Provincial Treasurer shall not pay from the fund any sum in compliance with an order until the judgment creditor assigns the judgment to the Superintendent.

11. Where a payment is made out of the fund pursuant to a judge's order, the Superintendent may apply any cash deposit or may by action in his own name enforce any security deposited by the judgment debtor under the provisions of this Act to the extent necessary to reimburse the fund for the amount of the payment so made.

12. Where the license of any person has been suspended or cancelled under this Act or *The Vehicles and Highway Traffic Act* or *The Public Service Vehicles Act*, and the Provincial Treasurer has paid from the fund any amount in or towards satisfaction of a judgment and costs, or either of them, recovered against that person, the cancellation or suspension shall not be removed, nor the license restored, nor shall any new license be issued or granted to that person until he has,—

- (a) repaid in full to the Provincial Treasurer the amount so paid by him together with interest thereon at four per cent per annum from the date of such payment; and
- (b) satisfied all the requirements of this Act and of *The Vehicles and Highway Traffic Act* in respect of giving proof of financial responsibility.

13.—(1) In addition to the remedies hereinbefore provided, any person who has been injured through the operation of a motor vehicle driven by another person to such an extent as to require hospital treatment, may apply to the Superintendent for reimbursement of the hospital expenses out of the fund, and the Superintendent if satisfied as to the facts with respect to the claim and that the applicant was not himself solely to blame for the accident and that he was not entitled to the benefit of an insurance policy providing for the payment of such hospital expenses, may issue a certificate to that effect to the Provincial Treasurer stating the amount to which the applicant is entitled, and upon receipt of such certificate the Provincial Treasurer shall pay the amount to the hospital, or if the applicant has paid the hospital expenses, to the applicant, the sum so certified out of the fund.

(2) The hospital fees payable out of the fund pursuant to subsection (1) shall be at such rate as may from time to time be determined by the Lieutenant Governor in Council.

(3) Where any person has received payment of hospital expenses under this section and subsequently recovers a judgment which is unsatisfied and under which he is entitled to receive payment from the fund, and the amount of the hospital expenses is included in the said judgment, that amount shall be deducted from the amount payable pursuant to subsection (4) of section 8 or section 9.

(4) For any amount paid under the provisions of subsection (1), the Superintendent shall be subrogated to any rights which the person hospitalized has against any person whose negligence has caused or contributed to the injuries in respect of which the hospital expenses were incurred.

14. Where at any time there is not sufficient money available in the fund for payment of a claim or claims which has or have become payable, the amount or amounts required may be advanced by the Provincial Treasurer out of the General Revenue Fund and in any such case the amount so advanced shall be repaid to the General Revenue Fund as soon as practicable.

15. This Act shall come into force on the first day of April, 1947.

No. 85

FOURTH SESSION
TENTH LEGISLATURE
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1947

BILL

An Act Respecting Accidents Arising
out of the Operation of Motor
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Indemnity Therefor.

Received and read the

First time

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HON. MR. HOOKE.

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