

Bill No. 72 of 1951.

A BILL TO AMEND THE MOTOR VEHICLE
ACCIDENT INDEMNITY ACT

NOTE.

This Bill amends *The Motor Vehicle Accident Indemnity Act*, being chapter 11 of the Statutes of Alberta, 1947.

The amendment to section 6*a* is for the purpose of enabling the Minister to release an impounded motor vehicle so that it may be sold to pay the garageman's lien and other claims for damages against the vehicle. The vehicle is being held to secure payment of claims, and this amendment authorizes the release of the motor vehicle so that it may be sold in order to satisfy claims.

The amendment to section 7*a*, subsection (2) makes it clear that the Superintendent may appear on an assessment of damages which may not be considered to be a part of the trial in an undefended action. Subsection (3) is amended to give the Superintendent thirty days' notice instead of fifteen days' notice. It has been found in practice that fifteen days is insufficient time to permit adequate inquiries to be made and to arrange for counsel in cases where the Superintendent considers he ought to defend the action.

Section 8, subsection (1) is amended in order to permit applications for orders directing payment to be made to a District Court judge rather than a Supreme Court judge in cases where judgment is obtained in the District Court. New clauses (*d*) and (*e*) are added to subsection (4). Clause (*d*) provides that the Fund will not be liable unless the plaintiff takes action against all persons who might reasonably be considered as partially responsible. Thus, where two persons are responsible for an accident, one of them will not be able to avoid responsibility for payment by reason of the fact that the plaintiff sues only one of the parties and leaves out the one who may be financially responsible. Clause (*e*) provides that payment will not be made until all actions have been completed. This will ensure that an order will not be issued directing payment to one judgment creditor to the detriment of subsequent judgment creditors in the event of judgments being given in an amount in excess of the maximum payable by the Provincial Treasurer. A new subclause (iv) to clause (*b*) of subsection (6) is added to provide that the Provincial Treasurer will not be required to pay five per cent interest on judg-

ments. Subsection (7) is amended to make it clear that the reference to one-half of the fees payable means the fees as set out in Schedule C of the Rules of Court. A new subsection (8) is added to establish the method of payment in cases in which judgments totalling in excess of the statutory limits of five thousand dollars, ten thousand dollars and one thousand dollars are recovered by two or more persons as a result of one accident. As the Act now stands, if two or more judgments totalling an amount in excess of the statutory limits are recovered, there is nothing to indicate the manner in which the maximum amount payable from the Fund should be apportioned. Clause (b) of subsection (8) is intended to place the onus on claimants to enter suit so that the Provincial Treasurer will not make a disbursement to a judgment creditor from the Fund to the prejudice of a claimant who subsequently obtains judgment.

Section 9, subsection (3) is amended to provide that the Provincial Treasurer may make payment from the Fund without a judge's order in the case of a judgment against the Superintendent as a nominal defendant. The judgment against the Superintendent of itself requires that payment be made and there would appear to be no necessity of incurring additional costs for an order for payment.

The Bill comes into force on the 1st day of July, 1951.

KENNETH A. MCKENZIE,
Legislative Counsel.

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

BILL

No. 72 of 1951.

An Act to amend The Motor Vehicle Accident Indemnity Act.

(Assented to _____, 1951.)

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

1. *The Motor Vehicle Accident Indemnity Act*, being chapter 11 of the Statutes of Alberta, 1947, is hereby amended.

2. Section 6*a* is amended by adding immediately after clause (*h*) the following new clause: Section 6*a*
amended

“(i) the Minister is satisfied that arrangements have been made to sell the motor vehicle and apply the proceeds in satisfaction of the garageman’s lien, if any, and in settlement or partial settlement of claims for damages.”.

3. Section 7*a* is amended,—

Section 7*a*
amended

- (a) by adding immediately after the words “at the trial of any such action” where they occur in subsection (2), the words “or on an assessment of damages”;
- (b) by striking out the word “fifteen” where it occurs in subsection (3) and by substituting the word “thirty”.

4. Section 8 is amended,—

Section 8
amended

- (a) by adding immediately after the words “to a judge of the Supreme Court of Alberta” where they occur in subsection (1), the words “or in the case of a judgment recovered in a District Court to a judge of a District Court of Alberta”;
- (b) by adding immediately after clause (*c*) of subsection (4) the following new clauses:
 - “(d) that the applicant has fully pursued and exhausted all remedies available to him for recovering compensation for the damages that are the subject of the action in respect of which the judgment is given,—
 - “(i) by commencing action against all persons against whom the applicant might reasonably be considered as having a cause of action in respect of such damages;

“(ii) by prosecuting every such action in good faith to judgment or dismissal;

“(iii) by taking all reasonable steps available to him to recover upon every judgment so obtained; and

“(iv) by taking all other reasonable steps available to him to recover compensation for such damages;

“(e) that all other actions, if any, for damages resulting from bodily injury, death or damage to property in the same accident have been prosecuted to judgment or dismissal;”;

(c) by striking out the word and figure “and (7)” where they occur in subsection (4) and by substituting the figures and word “, (7) and (8)”;

(d) by adding immediately after subclause (iii) of clause (b) of subsection (6) the following new subclause:

“(iv) interest on any judgment which may have been obtained;”;

(e) by adding immediately after the words “and one-half of the fees payable” where they occur in subsection (7) the words “as set out in Schedule C of the Rules of Court”;

(f) by adding immediately after subsection (7) the following new subsection:

“(8) Where two or more persons recover judgments resulting from bodily injury, death or damage to property in one accident and the total of such judgments exceeds in the aggregate the statutory limits as to amount fixed by clause (b) of subsection (6) of this section,—

“(a) the amount payable by the Provincial Treasurer to each judgment creditor shall bear the same proportion to the total amount payable as the judgment of such judgment creditor bears to the total judgments recovered; and

“(b) no judgment creditor shall be entitled to make application for an order for payment by the Provincial Treasurer from the Unsatisfied Judgment Fund unless he has served his statement of claim upon the Superintendent on or before the fifteenth day following the date on which any prior judgment was obtained in an action for damages arising out of the same accident.”.

Procedure
where two
or more
persons
recover
judgments

Section 9
amended

5. Section 9, subsection (3) is amended by striking out the words “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

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application” and by substituting the words “the Provincial Treasurer, subject to the provisions of subsections (6), (7) and (8) of section 8, shall pay the judgment out of the Fund”.

6. This Act shall come into force on the first day of July, ^{Coming}
1951. _{into force}

No. 72.

FOURTH SESSION
ELEVENTH LEGISLATURE

15 GEORGE VI

1951

BILL

An Act to amend The Motor Vehicle
Accident Indemnity Act.

Received and read the

First time

Second time

Third time

HON. MR. GERHART.
