

Bill No. 85 of 1951.

A BILL TO AMEND THE ALBERTA
INSURANCE ACT.

NOTE.

This Bill amends *The Alberta Insurance Act*, being chapter 201 of the Revised Statutes of Alberta, 1942.

The amendments contained in this Bill fall into two main groups. One group of amendments relates to administration of deposits, reciprocal deposits and winding-up of insurers. The second main group of amendments affects the automobile insurance part of the Act and the statutory conditions contained in automobile insurance policies.

The Insurance Acts of all the provinces of Canada except Quebec are uniform. In most cases it is customary to amend *The Insurance Act* only after the proposed amendments have been discussed and approved by the Conference of Superintendents of Insurance representing all of the provinces. Amendments approved by the Conference are recommended to all the provinces of Canada for enactment and ordinarily they are brought into force simultaneously in all the provinces that enact them.

In the winding-up of the Home Assurance Company a number of difficulties were encountered which revealed the inadequate and ambiguous nature of the provisions of *The Insurance Act* dealing with administration of deposits, reciprocal deposits and winding-up. The Conference of Superintendents of Insurance in 1949 appointed a committee consisting of the Superintendents of Insurance and Legislative Counsel of the provinces of Alberta, Manitoba and British Columbia to study this problem and make a report. This committee met on several occasions throughout 1949 and 1950 with the liquidator of the Home Assurance Company and the solicitor representing him and the administrator of the deposit. The committee submitted a report to the Conference recommending a number of changes in the provisions relating to these subjects with a view to simplifying and clarifying them.

The recommendations of the committee were adopted by the Conference of Superintendents of Insurance at its 1950 meeting and were recommended to all of the provinces for enactment. This Bill contains those recommended amendments.

Section 59 and sections 65 to 77 inclusive are struck out and new provisions are substituted in their stead. These provisions deal with the administration of the deposit of an insurer.

Each insurer's deposit is taken under the provisions of *The Alberta Insurance Act* by the Superintendent of Insurance for the protection of policy-holders of that insurer. Although any person entitled to share in the proceeds of the deposit may apply for administration of it the new provisions require adequate notice of the intended application to be given to the Superintendent and that the Superintendent should have the first opportunity of applying for administration of the deposit. The amendments also provide a means of terminating outstanding contracts once administration of the deposit has been granted in order to preserve sufficient funds in the deposit to pay existing claims. The Bill provides for notice to policy-holders so that they can protect themselves by reinsuring elsewhere.

The amendments make it clear that the primary purpose of the deposit is for the protection of policy-holders. The sections provide that the only amount that can be paid out of the deposit apart from claims of policy-holders is the amount of the actual costs and expenses incurred in the administration of the deposit.

Under existing provisions a liquidator or receiver administering a deposit cannot make an interim distribution on account of claims against the deposit but must wait until liability for and the amount of all claims is finally determined. This creates considerable hardship on policy-holders who have incurred heavy losses, the claims for which are admitted. The Bill provides for distribution on account of claims from time to time with the approval of the court which avoids the necessity of such a policy-holder having to wait a year or more until other claims are settled before he receives any payment from the deposit on account of his claim.

Reinsurance is impossible from a practical standpoint once the receiver or liquidator commences to administer a deposit as policies are then being terminated both by the policy-holders themselves and by the fixing of a termination date under the Act. The Bill accordingly provides that before administration of the deposit commences the deposit may be used for the purposes of reinsurance by the Minister, or in the case of a reciprocal deposit by agreement among the Superintendents of the provinces covered by the reciprocal deposit.

Sections 78 to 81 of the Act deal with reciprocal deposits. These sections deal with cases where one province holds a deposit of an insurer not only for itself but for provinces which are reciprocating under the provisions of these sections. There are several amendments to the reciprocal

deposit sections to conform with the amendments made to the sections relating to the administration of individual deposits.

Section 137 dealing with liability of shareholders is struck out and a new section is substituted. This section now provides that a person holding shares in trust is not personally liable but that the estate in his hands is liable. If the only estate he holds in his hands in trust is the shares themselves there is no other estate in his hands from which calls can be paid. This is an obvious loophole by which shareholders of an insurer may evade liability in winding-up. The new section is similar to the present section in the *Dominion Companies Act* and provides that the estate or person represented by the trustee continues to be liable. Thus, liability for calls on the insurer's shares in winding-up cannot be evaded simply by transferring the shares to a trustee.

Section 152, sections 162 to 168 inclusive and sections 462 to 467 inclusive are all struck out. These provisions relate to the liquidation or winding-up of insurers. New sections 162 to 168e inclusive are substituted in their stead. The circumstances which give rise to the administration of a deposit, reciprocal or otherwise, are the same circumstances which may result in the winding-up or the liquidation of an insurer. In many cases administration of the deposit and winding-up of an insurer may be taking place simultaneously and policy-holders seeking settlement of their claims may be entitled to share both in the proceeds of the deposit being administered by the receiver and in the general assets of the company being wound up by the liquidator. Consequently, the provisions relating to administration of the deposit and to winding-up of an insurer must be such that the duties of the receiver and the liquidator do not conflict or are not inconsistent, particularly where their jurisdictions overlap.

The liquidation and winding-up provisions contained in this Bill are amended to make them consistent with the new provisions relating to administration of deposits and reciprocal deposits.

The second general group of amendments relate to automobile insurance. These amendments are also recommended by the Superintendents of Insurance for enactment by all the provinces of Canada. A standing committee consisting of representatives of Ontario, British Columbia and Manitoba has been working for some years on these amendments in consultation with representatives of the insurance companies. The amendments are designed to provide for a new standard automobile policy which will be sold in all the provinces of Canada except Quebec and Newfoundland. The various sections of *The Alberta Insurance Act* and of the statutory conditions relating to automobile insurance are amended to provide for this revised policy form. The new standard policy contains several additional coverages. It

provides for "comprehensive" coverage for damage to the insured automobile. It also gives coverage in stated circumstances and under certain conditions to the owner with respect to newly acquired automobiles, temporary substitute automobiles and the driving of other non-owned private passenger automobiles. This means that the insured and his spouse would be covered while driving not only their own automobile but some other automobile. The policy also provides for medical payments coverage and coverage for automobile radios. The addition of the new section 31a, the amendment of sections 257, 259, 264, 271 to 274, inclusive, 276, 276a, 276b, 278, 282 and the amendments to Schedule D containing the statutory conditions applicable to automobile insurance all deal with this same subject.

Apart from the two large groups of amendments that have already been dealt with there are some others dealing with various subjects.

Section 2, subsection (34) is amended to make the definition of "insurance" in the Alberta Act exactly the same as the corresponding definition in the Acts of the other provinces.

Section 26 is amended by the addition of a new subsection (4) which exempts insurers licensed under this Act from the payment of municipal license fees. Insurers are subject to municipal business taxes and to licensing by the Province. The amendment will prevent further license fees being imposed.

Section 33 is amended by the addition of a new clause (aa) which is similar to a provision contained in *The Manitoba Insurance Act* and *The Nova Scotia Insurance Act*. The effect of this amendment is that no life insurance company can carry on business in Alberta unless it is registered not only in Alberta under *The Alberta Insurance Act* but under the *Insurance Act* (Canada) as well. This protects Alberta policy-holders by making sure that the head offices of all life insurance companies carrying on business in the Province are subject to inspection by the underwriters and actuaries of the Dominion Department of Insurance. It is not practical for the Provincial Department of Insurance to employ a staff qualified for this purpose. The amendment will not adversely affect any company now licensed in the Province, as *The Empire Life* is the only one that has not applied for Dominion registration and it is specifically exempted from the application of this amendment.

Section 82, subsection (1), clause (a) is amended. This section sets out the securities in which insurers may invest their funds. The amendment will permit the investment of insurance moneys in debentures of school divisions.

Section 86 is amended. The effect of the amendment is to change the date of filing of annual returns from the 1st of April to the end of February.

v

Section 253, subsection (4) is amended. The duties of the Official Guardian are now carried on by the Public Trustee and the section is amended accordingly.

A new section 292a is added. This section will enable the Superintendent of Insurance to issue permits to insurers desirous of using automatic vending machines for the sale of transportation, accident, trip policies. The machines will sell policies of accident insurance and the legislation authorizing them will be uniformly enacted in all provinces where the machines are installed.

Section 468, subsection (2) is amended to correct an error.

The Bill comes into force on a date to be fixed by proclamation so that the amendments to the uniform sections of the Insurance Acts of the various provinces may be made effective from the same date for all provinces.

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. 85 of 1951.

An Act to amend The Alberta Insurance 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 Alberta Insurance Act*, being chapter 201 of the Revised Statutes of Alberta, 1942, is hereby amended.

2. Section 2, subsection (34) is amended by striking out the words "from certain risks or perils" and by substituting the words "for loss in respect of a certain risk or peril".

Section 2
amended

3. Section 26 is amended by adding immediately after subsection (3) the following new subsection:

Section 26
amended

"(4) The holder of a license under the provisions of this Act shall be exempt from payment of any license fee for the transaction of the business of insurance imposed by a municipal corporation within the Province."

4. The following new section 31a is added immediately after section 31:

New
section 31a

"31a. Every insurer licensed for the transaction of automobile insurance may, under the authority of its license, unless the license expressly provides otherwise, provide the restricted accident insurance authorized under section 276a."

Restricted
accident
insurance

5. (1) Section 33 is amended by adding immediately after clause (a) the following new clause:

Section 33
amended

"(aa) to any insurer undertaking life insurance, unless the insurer is registered under *The Canadian and British Insurance Companies Act, 1932* (Canada), or under *The Foreign Insurance Companies Act, 1932* (Canada), or has obtained its certificate of registry from the Superintendent of Insurance appointed under *The Department of Insurance Act* (Canada);"

(2) Subsection (1) does not apply to The Empire Life Insurance Company.

6. Section 59 is repealed.

Section 59
repealed

7. Sections 65 to 77 inclusive are struck out and the following are substituted:

Sections 65
to 77
amended

- Interpretation
"Alberta contract"
- "65.** In sections 65 to 81 inclusive and in sections 162 to 168e inclusive, unless the context otherwise requires,—
- "(a) 'Alberta contract' means a subsisting contract of insurance that,—
- "(i) has for its subject,—
- "(A) property that at the time of the making of the contract is in the Province or is in transit to or from the Province; or
- "(B) the life, safety, fidelity or insurable interest of a person who at the time of the making of the contract is resident in, or has its head office in the Province; or
- "(ii) makes provision for payment thereunder primarily to a resident of the Province or to an incorporated company, that has its head office in the Province;
- "insured person"
- "(b) 'insured person' means a person who enters into a subsisting contract of insurance with an insurer and includes,—
- "(i) every person insured by a contract, whether named or not; and
- "(ii) every person to whom or for whose benefit all or part of the proceeds of a contract of insurance are payable; and
- "(iii) every person entitled to have insurance money applied toward satisfaction of his judgment in accordance with section 278;
- "loss"
- "(c) 'loss' includes the happening of an event or contingency by reason of which a person becomes entitled to a payment under a contract of insurance of money other than a refund of unearned premiums;
- "reciprocal deposit"
- "(d) 'reciprocal deposit' means a deposit of an insurer held pursuant to sections 79 or 80;
- "reciprocating province"
- "(e) 'reciprocating province' means a province that has been declared to be a reciprocating province pursuant to section 79, subsection (1), clause (a) or section 80, subsection (1), with respect to the deposit of a particular insurer.
- Use of deposit for reinsurance
- "66.** (1) Notwithstanding anything hereinafter contained but subject to subsection (2), at any time before the granting of an order for administration of a deposit and upon the recommendation of the Superintendent certifying that such action is necessary or desirable for the protection of policy-holders entitled to share in the proceeds of the deposit, the Minister may use all or any part of the deposit for the purpose of reinsuring all or any part of the Alberta contracts.
- "(2) A reciprocal deposit may be used for purposes of reinsurance in the manner and to the extent agreed upon by the Superintendents of Insurance of the reciprocating provinces and not otherwise.

“67. (1) The deposit made by an insurer under this Act shall be subject to administration in the manner hereinafter provided. Administration of deposit

“(2) Subject to sections 79 and 80, the deposit shall be held and administered for the benefit of all insured persons under Alberta contracts and they shall be entitled to share in the proceeds of the deposit. Persons entitled to share in deposit

“(3) An insured person under an Alberta contract shall be entitled to share in the proceeds of the deposit in respect of,— Claims payable from deposit

“(a) a claim for a loss that is covered by the contract and that occurred before the termination date fixed pursuant to section 72 or section 168a; or

“(b) a claim for refund of unearned premiums except in the case of life insurance; or

“(c) a claim for payment of the legal reserve in respect of the contract in the case of life insurance; or

“(d) claims under both clauses (a) and (b).

“68. (1) An application for administration of a deposit shall be made by originating notice of motion to a judge of the Supreme Court of Alberta. Application for administration of deposit

“(2) The application shall be made in the judicial district in Alberta,—

“(a) in which the head office of the insurer is situate; or

“(b) in which the chief office of the insurer in the Province is situate if its head office is outside the Province.

“69. (1) With the approval of the Minister, the Superintendent may make application for administration at any time when, in his opinion, it is necessary or desirable for the protection of the insured persons entitled to share in the proceeds of the deposit. Application for administration of deposit by Superintendent

“(2) In the case of a reciprocal deposit held in this Province, the Superintendent of Insurance of any reciprocating province may make application for administration of the deposit. Application for administration of reciprocal deposit

“(3) An insured person entitled to share in the proceeds of a deposit may make application for administration of the deposit upon producing evidence,— Application for administration of deposit by insured person

“(a) that he has served the Superintendent of Insurance for Alberta with a notice in writing of his intention to make the application if the Superintendent or the Superintendent of Insurance of any reciprocating province does not apply; and

“(b) that sixty days have elapsed since the service of the notice and that no application for administration of the deposit has been made.

“(4) In the case of a reciprocal deposit, if the Superintendent is served with a notice as provided in subsection (3), he shall forthwith notify the Superintendent of Insurance of each reciprocating province that he has been so served.

Persons to be served with notice of application for administration of deposit

“70. (1) The applicant for administration of the deposit shall serve the originating notice of motion at least ten days prior to the date specified in the notice for the making of the application,—

“(a) upon the insurer or, where the insurer is in liquidation, upon the liquidator of the insurer; and

“(b) upon the Superintendent of Insurance for Alberta; and

“(c) in the case of a reciprocal deposit, upon the Superintendent of Insurance of each reciprocating province.

Order for administration

“(2) An applicant for administration shall be entitled to an order for administration upon proof,—

“(a) that the license of the insurer has been cancelled, and that its assets are insufficient to discharge its outstanding liabilities; or

“(b) that an order has been made for the winding-up of the insurer; or

“(c) that the insurer has failed to pay,—

“(i) an undisputed claim for sixty days after it has been admitted; or

“(ii) a disputed claim after final judgment and tender of a valid discharge;

if the claim arose under a contract of insurance in respect of which the deposit is subject to administration.

Appointment of receiver

“71. (1) Upon granting an order for administration the court shall appoint a receiver to administer the deposit.

Appointment of provisional liquidator to administer deposit

“(2) Where a provisional liquidator or a liquidator has been appointed under this Act or *The Companies Act*, or a liquidator has been appointed under the *Winding-up Act* (Canada) to wind up a company that has made a deposit under this Act, the court may appoint the provisional liquidator or the liquidator as the receiver to administer the deposit.

“(3) Thereupon the provisional liquidator or the liquidator shall administer the deposit for the benefit of the insured persons entitled to share in the proceeds thereof in accordance with the priorities and other provisions prescribed in this Act.

Fixing of termination date

“72. (1) Where a termination date has not been fixed by a provisional liquidator or a liquidator pursuant to section 168a, forthwith after his appointment the receiver shall fix a termination date for the subsisting contracts of insurance of the insurer; and on and after that date coverage and protection under the Alberta contracts shall cease and determine, and the insurer shall not be liable under any such contract for a loss that occurs after that date.

Coverage ceases after termination date fixed

“(2) Where a receiver administering a reciprocal deposit held in another province for the benefit of the insured persons under Alberta contracts fixes a termination date for the subsisting contracts of insurance of the insurer, on and

after that date coverage and protection under the Alberta contracts shall cease and the insurer shall not be liable under any such contract for a loss that occurs after that date.

“(3) The termination date shall not be fewer than twenty nor more than forty-five days after the date upon which the receiver was appointed.

“(4) The receiver shall forthwith give notice in writing of the termination date to the Superintendent of Insurance for Alberta and, in the case of a reciprocal deposit, to the Superintendent of Insurance of each reciprocating province. Notice of
termination
date

“(5) The receiver shall forthwith publish notice of the termination date in the official gazette of this Province and of each reciprocating province and in such newspapers circulating in those provinces as the receiver in his opinion deems advisable in order to give reasonable notice of the termination date.

“73. (1) The Superintendent, forthwith upon receiving notice of a termination date fixed by the receiver administering the deposit of an insurer, shall take such action as he may deem advisable in the interests of the insured persons under Alberta contracts to give notice of that date to them as soon as is reasonably possible. Notice to
insured
persons of
termination
date

“(2) Without restricting the generality of subsection (1), the Superintendent may forthwith require each agent of the insurer in the Province to forward to him a list showing the name and address of each person who has entered into a contract of insurance with the insurer of whom he has a record.

“(3) On receipt of each list forwarded by an agent the Superintendent may send by ordinary mail to each person whose name appears on the list a notice containing the following information,—

“(a) the termination date fixed by the receiver;

“(b) the name and address of the receiver to whom particulars of claims for loss and claims for refund of unearned premiums should be submitted;

“(c) such other information as the Superintendent deems advisable.

“(4) The Superintendent, in his discretion, may publish, broadcast or otherwise communicate or distribute the information stated in the notice, either generally or in any particular area or case, in such manner and by such means as he deems best suited to convey the information to the insured persons as soon as is reasonably possible having regard to all the circumstances.

“74. Forthwith after his appointment the receiver shall,— Duties of
receiver

“(a) call either upon the insurer or its agents or liquidator to furnish a list of all insured persons who are entitled to share in the proceeds of the deposit; and

“(b) call upon all insured persons who are entitled to share in the proceeds of the deposit to file their claims if they have not already done so.

Powers of receiver

“75. The court, by the order appointing a receiver or by any subsequent order, may authorize the receiver to exercise, in respect of the accounts of the insurer, all or any of the powers that the Master in Chambers would have if he were taking an account of the claims against the deposit; and every receiver so authorized shall have those powers, as well as all other powers enjoyed by a receiver appointed under an order of the court.

Receiver may apply to court for order

“76. (1) The receiver may apply to the court from time to time for an order authorizing him,—

“(a) to sell or realize upon all or any portion of the securities comprised in the deposit of the insurer; and

“(b) to pay from the proceeds thereof the costs of the administration of the deposit including salaries of office staff, office expenses, the fee for the services of the receiver, fees and disbursements to adjusters and solicitors, and such other costs and expenses as the court deems proper.

“(2) The court may require the receiver to give such notice, if any, of the application, in such manner, as the court may require.

“(3) After hearing the application the court may make the order and may require the receiver to comply with such conditions as the court may direct.

Payment of proceeds of deposit

“77. The proceeds of the deposit shall be payable,—

“(a) firstly in payment of the receiver and of all costs and expenses incurred by him in the administration of the deposit and in payment of all or part of the remuneration, costs and expenses of the provisional liquidator if so ordered by the Minister pursuant to section 165, subsection (3);

“(b) secondly in payment of the insured persons who are entitled to share in the proceeds of the deposit in accordance with the priorities set out in section 77a.

New sections 77a to 77h inclusive

Priority of claims

“77a. (1) Except in the case of life insurance, each insured person who claims in respect of a loss covered by the contract that occurred before the termination date fixed pursuant to section 72 or section 168a shall be entitled to receive payment of his approved or settled claim in full in priority to the insured persons who claim in respect of refunds of unearned premiums.

Refund of unearned premiums

“(2) Subject to subsection (1), an insured person who claims in respect of a refund of unearned premiums may claim such part of the premium paid as is proportionate to the period of his contract unexpired,—

“(a) at the termination date fixed by the receiver pursuant to section 72 or fixed by the provisional liquidator or the liquidator pursuant to section 168a; or

“(b) at the date the insured person cancelled the contract;

whichever date is the earlier.

“(3) In the case of life insurance, each insured person who has a claim for a loss covered by the contract that occurred before the termination date fixed pursuant to section 72 or section 168a shall rank in the distribution of the proceeds of the deposit for the approved or settled amount of the claim *pari passu* with insured persons under un-matured life insurance contracts.

Rank in
distribution
of proceeds

“(4) An insured person under an un-matured life insurance contract shall be entitled to the full amount of the legal reserve in respect of his contract determined by the receiver according to the valuation thereof approved by the Superintendent under the provisions of this Act.

Legal
reserve

“77b. (1) Where an insured person has filed a claim for a loss covered by the contract that occurred before the termination date fixed pursuant to section 72 or section 168a, the receiver shall inquire into the claim and,—

Approval or
refusal of
claim by
receiver

“(a) may approve the claim if a final judgment has been obtained against the insurer in respect thereof; or

“(b) may approve the claim if it has been adjusted or settled by the insurer or by the receiver at an amount that, in his opinion the claimant is reasonably entitled to receive;

“(c) may refuse to approve the claim or the amount thereof.

“(2) An appeal lies from any decision of the receiver if taken within thirty days from the date on which the person appealing has received notice of the decision.

Appeal from
decision of
receiver

“(3) The appeal shall be taken by the filing and service on the receiver of a notice of motion returnable before a judge of the Supreme Court in Chambers, who may summarily determine the matter, or may direct an issue to be tried, or may make such other order as he deems proper.

“77c. (1) The receiver shall prepare a list showing the names of the persons who appear by the books and records of the insurer or otherwise to be entitled to share in the proceeds of the deposit.

List of
persons
entitled to
share in
deposit

“(2) The receiver shall prepare and attach to the list a schedule of approved claims for losses showing in respect of each approved claim for loss made by a person appearing on the list,—

Schedule of
approved
claims

“(a) the name and address of the claimant;

“(b) the particulars of the contract of insurance upon which the claim is based;

“(c) whether the claim was reduced to judgment or was adjusted or settled; and

“(d) the amount for which the claimant is entitled to rank upon the fund.

“(3) The receiver shall prepare and attach to the list a schedule of unapproved claims for losses showing in respect of each claim for loss that has not yet been approved made by a person appearing on the list,—

Schedule of
unapproved
claims

- “(a) the name and address of the claimant;
- “(b) the particulars of the contract of insurance upon which the claim is based;
- “(c) the amount for which the claim is made or the amount estimated by the receiver as the probable maximum amount that will be payable under the contract in respect of that loss.

Schedule of
refundable
unearned
premiums

“(4) Except in the case of life insurance, the receiver shall prepare and attach to the list a schedule of unearned premiums refundable showing in respect of each person whose name appears on the list and who is entitled to a refund,—

- “(a) his name and address;
- “(b) the particulars of the contract of insurance in respect of which the unearned premium is refundable;
- “(c) the date on which the policy was terminated either by the receiver pursuant to section 72 or by the provisional liquidator or the liquidator pursuant to section 168a or was cancelled by the insured person;
- “(d) the amount of the unearned premium as calculated by the receiver in accordance with section 77a, subsection (2).

Schedule of
contract
legal
reserves

“(5) In the case of life insurance, the receiver shall prepare and attach to the list a schedule of contract legal reserves showing in respect of each person whose name appears on the list and who is entitled to claim for the legal reserve in respect of his contract,—

- “(a) his name and address;
- “(b) the particulars of the contract of insurance in respect of which the legal reserve is payable;
- “(c) the amount of the legal reserve calculated by the receiver pursuant to section 77a, subsection (4).

Order
authorizing
payment of
claims

“77d. (1) Upon completion of the schedules and after having paid or provided reasonable reserves from the deposit to pay the amounts payable pursuant to section 77, clause (a), the receiver may apply to the court for an order authorizing the payment of such aggregate sum as may be fixed by the court on account of the amounts payable pursuant to section 77, clause (b).

Distribution
of deposit

“(2) Except in the case of life insurance, the receiver shall divide the sum mentioned in subsection (1) so as to provide for payment of the claims for loss in full or, if the sum is inadequate, *pro rata* on account of,—

- “(a) the approved claims for losses set out in the schedule of approved claims for losses; and
- “(b) the unapproved claims for losses set out in the schedule of unapproved claims for losses;

and shall distribute the portion referred to in clause (a) at such time or times as the receiver may determine to the persons entitled thereto and shall retain the portion referred to in clause (b) for distribution from time to time as the unapproved claims are approved.

“(3) Except in the case of life insurance, if there appears to be a surplus remaining after the receiver has paid or retained a sum that in his opinion is reasonably adequate to pay in full all claims for loss referred to in subsection (2), the receiver shall divide the surplus so as to provide for payment of all unearned premiums in full or, if it is inadequate, among the persons entitled to a refund of unearned premiums in proportion to the amounts payable as set out in the schedule of unearned premiums refundable.

Disposition
of surplus

“(4) In the case of life insurance, the receiver shall divide the sum fixed pursuant to subsection (1) so as to provide for payment of the following amounts in full or, if the sum is inadequate, *pro rata* on account of,—

Distribution
of deposit

“(a) the approved claims for losses set out in the schedule of approved claims for losses;

“(b) the unapproved claims for losses set out in the schedule of unapproved claims for losses;

“(c) the full amount of the legal reserve in respect of each unmaturing life insurance contract as set out in the schedule of contract legal reserves;

and shall distribute the portions referred to in clauses (a) and (c) at such time or times as the receiver may determine to the persons entitled thereto and shall retain the portion referred to in clause (b) for distribution from time to time as the unapproved claims are approved.

“77e. If a claim in respect of a loss that occurred before the termination date is filed after the receiver has applied to the court under section 77d, subsection (1) and before the final order of the court discharging the receiver, the claimant shall be entitled to share in the distribution of the moneys remaining in the hands of the receiver upon proof of his claim and upon such terms and conditions as the court may direct.

Claim filed
after appli-
cation for
order
authorizing
payment

“77f. The receiver administering a deposit may apply to the court at any time on summary application for directions or advice pertaining to any matter arising in the administration of the deposit.

Receiver
may apply
for direc-
tions and
advice

“77g. Upon the completion of the distribution of the proceeds of the deposit the receiver shall submit his final accounts to the court; and the court, on the passing thereof, may make an order approving the accounts and discharging the receiver.

Final
accounting
and dis-
charge of
receiver

“77h. If a claim is made after the completion of the distribution of the proceeds of the deposit and the discharge of the receiver, or if there is a claim against the insurer by an insured person not fully paid by the distribution of the proceeds of the deposit, the claimant is not barred from any recourse he may have against the insurer, and his claim shall be a first lien or charge on the assets of the insurer in winding-up as provided in section 167, subsection (2).”

Claim after
completion
of distribu-
tion of
deposit

Section 79
amended

8. Section 79 is amended,—

- (a) by striking out clauses (a) and (b) of subsection (1) and by substituting the following:
- “(a) the amount of the deposit to be made and maintained by the insurer shall be fixed by order of the Lieutenant Governor in Council and the order shall declare what provinces are reciprocating provinces with respect to that insurer’s deposit;
- “(b) the deposit shall be held and administered as security *pari passu* for the Alberta contracts of the insurer and for its contracts in any reciprocating province;”;
- (b) by adding at the end of clause (e) of subsection (1) the words “and the Superintendent forthwith shall give notice of the delivery or transfer to the Superintendent of Insurance of each reciprocating province”;
- (c) by striking out the words “or where its deposit becomes liable to administration under this Act,” where they occur in clause (g) of subsection (1);
- (d) by striking out clause (h) of subsection (1) and by substituting the following:
- “(h) where the insurer ceases to transact business in, or its license is suspended or cancelled in, a reciprocating province and notice thereof is given to the Superintendent, the Minister and the Superintendent, upon the request of the Superintendent in the reciprocating province, may take any action that could be taken if the insurer were ceasing to transact business in, or its license were suspended or cancelled in, this Province.”;
- (e) by adding at the end of subsection (2) the words “and the Superintendent forthwith shall give notice of any change or transfer to the Superintendent of Insurance of each reciprocating province”.

Section 80
amended

9. Section 80 is amended by striking out subsections (1) and (2) and by substituting the following:

Exemption
of insurer
to make and
maintain
deposit

“80. (1) Where an insurer has its head office for Canada in another province and there makes a deposit of such amount as may be fixed by the proper authority in that province and under the laws of that province the deposit is held as security *pari passu* for its Alberta contracts and its contracts in every reciprocating province, the Minister, upon receipt of a certified copy of an order of the Lieutenant Governor in Council of the province in which the deposit is made fixing the amount of the deposit and declaring that Alberta is a reciprocating province with respect to that insurer’s deposit, and upon receipt of the consent of the insurer to its deposit being so held, shall

exempt the insurer from the provisions of this Act requiring it to make and maintain a deposit.

“(2) Where the insurer ceases to transact business in, or its license is suspended or cancelled in, this Province the Superintendent shall immediately give notice thereof to the Superintendent of the province in which the reciprocal deposit is held and to the Superintendent of each other reciprocating province.

Notice of
cessation
of business

“(2a) Where an order is made for the administration of a reciprocal deposit held in another province pursuant to the provisions of subsection (1), the Superintendent, as soon as is reasonably possible after receipt of notice of the termination date fixed by the receiver, shall proceed pursuant to section 73 to give the notice required by that section to the insured persons under the Alberta contracts.”.

Notice to
insured
person

10. The following new section 80a is added immediately after section 80:

New
section 80a

“**80a.** At any time before the granting of an order for the administration of a reciprocal deposit the Superintendents of Insurance of each reciprocating province may enter into an agreement to use all or any part of the securities deposited for the purpose of reinsuring all or any part of the risks of the insurer outstanding in all or any of those provinces.”.

Agreements
to use
securities
for
reinsurance

11. Section 82, subsection (1), clause (a) is amended by adding immediately after the words “school district” the words “or school division”.

Section 82
amended

12. Section 86 is amended by striking out the words “first day of April” and by substituting the words “last day of February”.

Section 86
amended

13. Section 137 is struck out and the following is substituted:

Section 137
amended

“**137.** (1) No executor, administrator, tutor, curator, committee, guardian or trustee who is entered on the books of the company as a shareholder and therein described as representing in any such capacity a named estate, trust or person, shall be personally liable in respect of the share that he so represents, notwithstanding any neglect or omission on the part of the company to enter the proper description on its books.

Liability of
executor,
administra-
tor, etc. as
shareholder

“(2) The estate or person so represented shall continue to be liable as if the testator, intestate, minor, ward, lunatic or interdicted person, *cestui que trust* or other person were entered in the books of the company as the holder of the shares.

“(3) No person holding stock in the company as collateral security shall be personally subject to liability as a shareholder; but the person pledging the stock shall be deemed to hold it and shall be liable as a shareholder accordingly.”.

Section 152 repealed	14. Section 152 is repealed.
Sections 162 to 168 amended	15. Sections 162 to 168 inclusive are struck out and the following are substituted:
	“Liquidation and Winding-up.
Winding-up of provincial- ly incorpor- ated insur- ance company	“162. A provincially incorporated insurance company is subject to the winding-up provisions of <i>The Companies Act</i> except in so far as they may be varied by the special provisions of this Act.
Winding-up of insurer	“163. (1) An insurer incorporated in Alberta may also be wound up by order of the court on the application of the Superintendent if the court is satisfied that,—
	“(a) the insurer has failed to exercise its corporate powers during any continuous period of four years; or
	“(b) the insurer has not commenced business or gone into actual operation within four years after it was incorporated; or
	“(c) the insurer has discontinued business for one year after it has undertaken insurance contracts within the meaning of this Act; or
	“(d) the insurer’s license has been suspended for one year or more; or
	“(e) the insurer has carried on business or entered into a contract or used its funds in a manner or for a purpose prohibited or not authorized by this Act or by its Act of incorporation or by any special Act applicable thereto; or
	“(f) other sufficient cause has been shown.
	“(2) No such application shall be made by the Superintendent without the approval of the Lieutenant Governor in Council.
	“(3) Upon the making of an order under this section the provisions of <i>The Companies Act</i> relating to winding-up of a company, in so far as they are not inconsistent with this Act, shall apply.
Provisional liquidator	“164. (1) In the case of an insurer incorporated in Alberta,—
	“(a) if its license expires and,—
	“(i) the insurer fails to renew within the period limited by this Act; or
	“(ii) a renewal is refused; or
	“(b) if its license is cancelled;
	the Minister may appoint a provisional liquidator who shall take charge of the affairs of the company and may direct that it be wound up forthwith under <i>The Companies Act</i> .
	“(2) Until a permanent liquidator is appointed the provisional liquidator shall exercise all the powers of the insurer and none of the officers or servants of the insurer shall make any contract for, incur any liability on behalf

of, or expend any moneys of, the insurer without the approval of the provisional liquidator.

“(3) The provisional liquidator shall petition the court for a winding-up order; and if the court is of the opinion that it is just and equitable to do so, it may make an order winding-up the company and thereupon the provisions of *The Companies Act* relating to the winding-up of a company, in so far as they are not inconsistent with this Act, shall apply.

Winding-up
order

“(4) The provisional liquidator or the liquidator, notwithstanding the provisions of *The Companies Act*, but subject to the approval of the court, may sell the business and undertaking of the company as a going concern.

Sale of
business

“**165.** (1) The remuneration to be paid to a provisional liquidator appointed under section 164, subsection (1) shall be fixed by the Minister.

Remunera-
tion of
provisional
liquidator

“(2) The remuneration and all expenses and outlay in connection with the appointment of the provisional liquidator, together with all expenses and outlay of the provisional liquidator while he acts in that capacity, shall be borne and paid by the insurer and shall form a first lien or charge upon the assets of the insurer, other than the deposit, unless otherwise directed pursuant to subsection (3).

Insurer
liable for
remunera-
tion and
expenses of
provisional
liquidator

“(3) The Minister, in his discretion, may direct that the remuneration, expenses and outlay shall be paid out of the proceeds of the deposit made by the insurer; and in that case the amount directed to be paid shall have the same priority as the expenses of the receiver administering the deposit as fixed by section 77, clause (a).

“**166.** (1) When an insurer incorporated under or subject to the laws of the Province proposes to cease writing insurance or to call a general meeting to consider a resolution for the voluntary liquidation of the insurer under the provisions of *The Companies Act*, it shall give at least one month's notice in writing thereof to the Superintendent and to the Superintendent of Insurance of each other province in which the insurer is licensed.

Notice of
voluntary
liquidation

“(2) When an insurer has passed a resolution for voluntary winding-up the insurer shall notify the Superintendent thereof and of the date at which contracts of insurance will cease to be entered into by the insurer, and of the name and address of its liquidator.

“(3) The notice under subsection (2) shall also be published by the insurer in two consecutive issues of the official gazette of each province in which the insurer is licensed and in such newspapers and other publications as the Superintendent may require.

“**167.** (1) The provisional liquidator or the liquidator, before any order granting administration of the deposit and before the fixing of a termination date pursuant to section 168a, may arrange for the reinsurance of the subsisting contracts of insurance of the insurer with some other insurer licensed in the Province,

Reinsurance
of subsisting
contracts

“(2) For the purpose of securing the reinsurance the following funds shall be available,—

“(a) the entire assets of the insurer in the Province other than the deposit except the amount reasonably estimated by the liquidator or the provisional liquidator as being required to pay,—

“(i) the costs of the liquidation or winding-up;

“(ii) all claims for losses covered by the insurer’s contracts of insurance of which notice has been received by the insurer or liquidator or provisional liquidator before the date on which the reinsurance is effected;

“(iii) the claims of the preferred creditors who are the persons paid in priority to other creditors under the winding-up provisions of *The Companies Act*;

all of which shall be a first charge on the assets of the insurer other than the deposit;

“(b) all or such portion, if any, of the deposit as may be agreed upon pursuant to subsection (3).

“(3) If it appears necessary or desirable to secure reinsurance for the protection of insured persons entitled to share in the proceeds of the deposit, the Minister, on the recommendation of the Superintendent, or in the case of a reciprocal deposit the Superintendents of Insurance of each of the reciprocating provinces may enter into an agreement with the provisional liquidator or the liquidator, whereby, pursuant to section 66 or section 80a, all or any part of the securities in the deposit may be used for the purpose of securing the reinsurance.

“(4) Creditors of the insurer, other than the insured persons and the said preferred creditors, shall be entitled to receive a payment on their claims only if provision has been made for the payments mentioned in subsection (2) and for the reinsurance.

“(5) If, after providing for the payments mentioned in subsection (2), the balance of the assets of the insurer, together with all or such portion, if any, of the deposit as may be agreed upon pursuant to subsection (3), is insufficient to secure the reinsurance of the contracts of the insured persons in full the reinsurance may be effected for such portion of the full amount of the contracts as may be possible.

“(6) No contract of reinsurance shall be entered into pursuant to this section until it is approved by the court.

Transfer of
deposit from
receiver to
provisional
liquidator

“168. (1) In the winding-up of an insurer that has made a deposit pursuant to this Act, if the person appointed as receiver to administer the deposit pursuant to section 71, is not the person appointed as provisional liquidator or the liquidator under this Act or *The Companies Act* or appointed as liquidator under the *Winding-up Act* (Canada), as the case may be, the court at any time in its discretion may order that the deposit and the administra-

tion thereof be transferred from the receiver to the provisional liquidator or the liquidator.

“(2) Upon the making of an order pursuant to subsection (1), the provisional liquidator or the liquidator shall administer the deposit for the benefit of the persons entitled to share in the proceeds thereof in accordance with the priorities and other provisions prescribed in this Act.

“(3) The amount payable to the provisional liquidator or the liquidator for administering the deposit and all costs and expenses incurred by him in administering the deposit shall be paid from the proceeds of the deposit in accordance with the priorities fixed by section 77, clause (a); but the amount payable to the provisional liquidator or the liquidator and all costs and expenses incurred by him in the winding-up of the insurer shall not be paid from the deposit but shall be paid from, and shall be a first charge on, the assets of the insurer except as provided in section 165, subsection (3).

“**168a.** (1) If he fails to secure reinsurance, or if in his opinion it is impracticable or inexpedient to arrange for reinsurance, the provisional liquidator or the liquidator,—

“(a) with the approval of the court and subject to such terms as may be prescribed by the court; and

“(b) for the purpose of securing the payment of existing claims and avoiding further losses;

may publish a notice fixing a termination date for the subsisting contracts of insurance of that insurer; and on and after that date coverage and protection under the Alberta contracts shall cease and the insurer shall not be liable under any such contract for a loss that occurs after that date.

“(2) Where a provisional liquidator or a liquidator has been appointed in another province to wind up an insurer incorporated in that province, if the provisional liquidator or the liquidator fixes a termination date for the contracts of insurance of that insurer, on and after that date coverage and protection under the Alberta contracts shall cease and determine and the insurer shall not be liable under any such contract for a loss that occurs after that date.

“(3) Where a receiver administering a deposit has fixed a termination date pursuant to section 72, the termination date fixed pursuant to this section shall apply only to those contracts of insurance not already terminated on the date fixed by the receiver.

“**168b.** The provisional liquidator or the liquidator shall cause the notice,—

“(a) to be published in the official gazette of each province in which the insurer is licensed, and in such newspapers as the court may direct in order to give reasonable notice of the termination date so fixed; and

“(b) to be mailed to each policy-holder at his address as shown on the books and records of the company.

New sections
168a to 168e
inclusive
Termination
date for
subsisting
contracts

Notice of
termination
date

Provision
for payment
of claims
and costs
of
winding-up

“**168c.** (1) The liquidator shall pay or set aside from the assets of the insurer sums in his opinion sufficient to pay,—

“(a) the costs of the liquidation or winding-up;

“(b) all claims for losses covered by the insurer’s contracts of insurance that occurred before the termination date fixed pursuant to section 72 or section 168a and that have not been paid or provided for in the administration of the deposit and of which notice has been received by the insurer or the liquidator;

“(c) the full amount of the legal reserve in respect of each unexpired life insurance contract;

“(d) the claims of preferred creditors who are the persons paid in priority to other creditors under the winding-up provisions of *The Companies Act*.

Refunds of
unearned
premiums

“(2) Except in the case of life insurance, the assets remaining after payment, or making provision for payment, of the amounts mentioned in subsection (1) shall be used to pay the claims of the insured persons for refunds of unearned premiums on a *pro rata* basis in proportion to the periods of their contracts respectively unexpired on the termination dates, to the extent that those claims have not been paid or provided for in the administration of the deposit.

“(3) The claims of the insured persons for refunds of unearned premiums shall be calculated,—

“(a) as at the termination date fixed pursuant to section 72 or section 168a; or

“(b) as at the date the insured person cancelled the contract;

whichever date is the earlier.

“(4) The refund of all or a portion of the premium shall not destroy or defeat any other remedy the insured person may have against the insurer in respect thereof or for any other cause.

“(5) Nothing in this section shall prejudice or affect the priority of any mortgage, lien or charge upon the property of the insurer.

Fees, taxes
and costs

“**168d.** The fees, taxes and costs payable by the insurer to each province shall be paid out of the assets of the insurer remaining after the reinsurance of the subsisting contracts of insurance of the insurer or after the payment of the claims of policy-holders for refund of unearned premiums, as the case may be, and the balance shall be distributed amongst the creditors of the insurer other than the insured persons, preferred creditors and the several provinces.

Filing of
schedules of
receipts,
expendi-
tures, etc.
by
liquidator

“**168e.** (1) Unless otherwise ordered by the court, within seven days after the close of each period of three months and until the affairs of the insurer are wound up and the accounts are finally closed, the liquidator shall file

with the court or other authority appointing him and also with the Superintendent, detailed schedules showing in such forms as may be required,—

“(a) receipts and expenditures; and

“(b) assets and liabilities.

“(2) The liquidator, whenever he is required to do so by the authority appointing him or by the Minister, shall exhibit the office books and vouchers and furnish such other information respecting the affairs of the insurer as may be required.

“(3) A liquidator refusing or neglecting to furnish such information is guilty of an offence and liable on summary conviction for each such offence to a penalty of not less than fifty dollars or more than two hundred dollars to be recovered with costs on behalf of His Majesty for the use of the Province; and he shall in addition be liable to be dismissed or removed.”.

Penalty for refusal or neglect of liquidator to furnish required information

16. Section 253, subsection (4) is amended by striking out the words “Official Guardian of infants” and by substituting the words “Public Trustee”.

Section 253 amended

17. Section 257, clause (f) is amended by striking out the words “and designated in the policy” and by substituting the words “and specifically described in the policy and, in respect of the ownership, operation or use of any other automobile which may be within the definition thereof appearing in the policy”.

Section 257 amended

18. Section 259, subsection (3) is amended,—

Section 259 amended

(a) by striking out clauses (b) and (c) and by substituting the following:

“(b) particulars of all accidents, losses or claims arising out of the ownership, use or operation of an automobile by the applicant within the three years preceding the application;”;

(b) by adding immediately after the word “automobiles,” where it appears in clause (e) the words “to the knowledge of the applicant.”.

19. Section 259, subsection (4) is amended,—

Section 259 amended

(a) by striking out clauses (a), (b) and (c) and by substituting the following:

“(a) the name, address and occupation or business of the applicant;

“(b) the description of the automobile to be insured as the described automobile;

“(c) the purchase price to the applicant of the automobile so described;”;

(b) by striking out clauses (h), (i), (j) and (k) and by substituting the following:

- “(h) particulars of all accidents, losses or claims arising out of the ownership, use or operation of an automobile by the applicant within the three years preceding the application;
- “(i) whether any insurer has cancelled any policy of automobile insurance of the applicant, or refused automobile insurance to him;
- “(j) whether any license, permit, registration certificate or other like authority, issued to the applicant or member of his family and household under any law or statute of any province, state or country relating to automobiles, to the knowledge of the applicant, has been, or continued to be, suspended or cancelled within the three years preceding the application; and”.

(c) by relettering clause (l) as clause (k).

Section 264
amended

Avoidance of
policy for
misrepresent-
ation,
fraud or
violation of
condition

20. Section 264 is amended by striking out subsection (1) and by substituting the following:

“**264.** (1) Where an applicant for a contract gives false particulars of the described automobile to be insured, to the prejudice of the insurer, or knowingly misrepresents or fails to disclose in the application any fact required to be stated therein or where the insured violates a term or condition of the policy or commits a fraud, or makes a wilfully false statement with respect to a claim under the policy, a claim by the insured shall be invalid and the right of the insured to recover indemnity shall be forfeited.”.

Section 271
amended

Coverage of
owner's
policy

21. Section 271 is struck out and the following is substituted:

“**271.** (1) Every owner's policy shall insure the person named therein, and every other person who, with his consent, personally drives any automobile specifically described in the policy, against the liability imposed by law upon the insured named therein or upon any such other person for loss or damage,—

“(a) arising from the ownership, use or operation of any such automobile within Canada, the continental United States of America or Alaska, or upon a vessel plying between ports thereof; and

“(b) resulting from,—

“(i) bodily injury to or death of any person; or

“(ii) damage to property; or

“(iii) both.

“(2) Nothing in subsection (1) shall preclude coverage being provided in an owner's policy to the person named therein, and such other persons as may be specified therein who with his consent personally drive any other automobile within the definition thereof appearing in the policy, against the liability imposed by law upon the insured named therein or upon any such other person for loss or damage,—

- “(a) arising from the ownership, use or operation of any such automobile within Canada, the continental United States of America or Alaska, or upon a vessel plying between ports thereof; and
- “(b) resulting from,—
- “(i) bodily injury to or death of any person; or
- “(ii) damage to property; or
- “(iii) both.
- “(3). Any person insured by but not named in a policy may recover indemnity in the same manner and to the same extent as if named therein as the insured, and for that purpose shall be deemed to be a party to the contract and to have given consideration therefor.”

Rights of
unnamed
insured

22. Section 272, clause (a) is amended by striking out the words “or the United States of America” and by substituting the words “, the continental United States of America or Alaska”.

Section 272
amended

23. Section 273 is amended,—

Section 273
amended

- (a) by renumbering the section as subsection (1);
- (b) by adding immediately after subsection (1) the following new subsections:
- “(2) Where a person is insured under more than one motor vehicle liability policy (whether the insurance is first loss insurance or excess) and a question arises under clause (b) of subsection (1) between an insurer and the insured or between the insurers as to which insurer shall undertake the obligation to defend in the name and on behalf of the insured, whether or not any insurer denies liability under its policy, the insured or any insurer may apply to the Supreme Court of Alberta and the court shall give such directions as may appear proper with respect to the performance of the obligation.
- “(3) On an application under subsection (2) the only parties entitled to notice thereof and to be heard thereon shall be the insured and his insurers and no material or evidence used or taken upon such an application shall be admissible upon the trial of an action brought against the insured for loss or damage to persons or property arising out of the use of the automobile in respect to which the insurance is provided.
- “(4) An order under subsection (2) shall not affect the rights and obligations of the insurers with respect to payment of any indemnity under their respective policies.
- “(5) Where the insured has indemnity under two or more policies and one or more is or are excess insurance by virtue of section 276b, the insurers

shall, as between themselves contribute to the payment of expenses, costs and reimbursement provided for in subsection (1) in accordance with their respective liabilities for damages against the insured.”.

Section 274
amended

Exceptions
to liability
of insurer

24. Section 274 is struck out and the following is substituted:

“**274.** Subject to section 276*a*, the insurer shall not be liable under an owner’s policy or a driver’s policy,—

“(a) for any liability imposed by any workmen’s compensation law upon the insured; or

“(b) for loss or damage resulting from bodily injury to or the death of,—

“(i) the son, daughter, wife, husband, mother; father, brother or sister of the insured while being carried in or upon, or entering or getting on to, or alighting from the automobile; or

“(ii) the insured;

or unless the coverage is expressly extended under section 276;

“(c) to any person, not the owner of the automobile, engaged in the business of an automobile garage, repair shop or service station or as an automobile dealer, for loss or damage sustained while engaged in the operation or repair of the automobile; or

“(d) for any loss or damage resulting from bodily injury to or the death of any person being carried in or upon, or entering or getting on to, or alighting from the automobile; or

“(e) for loss of or damage to property carried in or upon the automobile or to any property owned or rented by, or in the care, custody or control of the insured; or

“(f) for loss or damage resulting from bodily injury to or the death of any employee of the insured while engaged in the operation or repair of the automobile.”.

Section 276
amended

Extended
coverage

25. Section 276 is struck out and the following are substituted:

“**276.** (1) The insurer may, by an indorsement on the policy and in consideration of an additional stated premium, and not otherwise, extend the coverage in the case of an owner’s policy or driver’s policy in whole or in part in any or all of the following respects, namely, the matters mentioned in clauses (c), (e) and (f) of section 274.

“(2) The insurer may, by an indorsement on the policy or by provision in the policy and in consideration of an additional stated premium, and not otherwise, extend the coverage in whole or in part in the case of an owner’s policy or driver’s policy in respect of the matter mentioned in clause (d) of section 274.

“(3) The insurer may, in the case of an owner’s policy, extend the coverage in whole or in part in respect of the operation or use of automobiles not owned by or registered in the name of the insured.

“(4) The insurer may, in the case of an owner’s policy or a driver’s policy, extend the coverage to such other matters as the Superintendent may approve.

“(5) No insurer shall extend the coverage under subsection (3) or (4) without the approval of the Superintendent as to the form of the extended coverage, the method of providing therefor and as to the necessity or otherwise of an additional stated premium for the coverage.

“**276a.** (1) An insurer issuing an owner’s policy or a driver’s policy may, in consideration of an additional stated premium, in addition to the other insuring agreements therein, agree to pay for each person who sustains bodily injury caused by an accident while driving, being carried in or upon, or entering or getting on to or alighting from the automobile specifically described in the policy or within the definition thereof appearing in the policy within Canada, the continental United States of America, or Alaska, or upon a vessel plying between ports thereof, if the automobile is being used by the insured named in the policy or with his consent, all reasonable expenses incurred, within one year from the date of the accident as a result of the injury, for necessary medical, surgical, dental, ambulance, hospital, professional nursing and funeral services.

New sections
276a and
276b

Coverage
for
necessary
medical,
surgical and
other
expenses

“(2) No insurer shall give the insurance under subsection (1) without the approval of the Superintendent as to the terms and conditions thereof.

“**276b.** (1) Subject to subsection (2), if the insured named in a policy has or places any additional or other valid insurance of his interest in the subject matter of the contract, or any part thereof, the insurer shall be liable only for its rateable proportion of any loss or damage.

Proportion-
ing liability
of insurer

“(2) Where a valid motor vehicle liability policy insures a person named therein and that person is also insured under another valid motor vehicle liability policy as an unnamed insured, the first mentioned policy shall be a first loss insurance and the second mentioned policy shall be excess insurance only.

“(3) A copy of subsections (1) and (2) shall be printed or stamped in conspicuous type, not less in size than ten point, upon every motor vehicle liability policy and those subsections shall constitute terms of the contract between the insurer and the insured and subsection (2) shall operate as between insurers.”.

26. Section 277 is amended by striking out the words “the last preceding six sections” and by substituting the words and figures “section 271, 272, 273, 274, 275, 276, 276a or 276b”.

Section 277
amended

Section 278
amended

27. Section 278 is amended,—

(a) by striking out subsections (4) and (5) and by substituting the following:

Contribution
among
insurers

“(4) The insurer may require any other insurers liable to indemnify the insured in whole or in part in respect of judgments or claims referred to in subsection (1) to be made parties to the action and to contribute according to their respective liabilities, whether this be rateably or by way of first loss or excess insurance, as the case may be, and the insured shall, on demand, furnish the insurer with particulars of all other insurance covering the subject matter of the contract.

Defence
where
excess
coverage

“(5) subject to subsection (5a), where a policy provides, or if more than one policy the policies provide for coverage in excess of the limits mentioned in section 275 or for extended coverage in pursuance of subsections (1), (2) and (4) of section 276, nothing in this section shall, with respect to such excess coverage or extended coverage, prevent any insurer from availing itself, as against a claimant, of any defence that the insurer is entitled to set up against the insured.

“(5a) Where a policy provides for extended coverage in respect of loss or damage resulting from bodily injury to, or the death of, any person being carried in or upon, or entering, or getting on to, or alighting from an automobile operated in the business of carrying passengers for compensation or hire subsection (5) shall apply only to that part of such extended coverage,—

“(a) which exceeds any minimum coverage required by this Act; or

“(b) where a greater minimum coverage is required by or pursuant to any other Act of, or in force in, the Province, which exceeds such greater minimum coverage.”;

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

“(8) An insurer shall be entitled to avail itself of subsection (7) notwithstanding that another insurer is defending in the name and on behalf of the insured an action to which its insured is a party.”.

Section 282
amended

28. Section 282 is amended by adding immediately after subsection (3) the following new subsection:

“(4) This Part does not apply to insurance provided under section 276a.”.

New
section 292a

29. The following new section 292a is added immediately after section 292:

“machine”

“**292a.** (1) In this section ‘machine’ means a vending machine whereby, on depositing therein the premium pay-

able for a policy of accident insurance, the person to be insured may obtain the policy therefrom.

“(2) Unless it holds a subsisting permit for the purpose granted by the Superintendent, no insurer shall issue a policy of accident insurance through the medium of a machine. Permit to issue policy by machine

“(3) The permit shall be in such form as shall be determined by the Superintendent; and he may alter the form thereof at any time as he may deem to be advisable.

“(4) .Notwithstanding any other provision of this Act, the term of a policy issued through the medium of a machine may be expressed as the duration of a journey, trip, voyage, or flight to be made by the insured by any means of transportation or conveyance. Terms of machine policy

“(5) The issue of a policy through the medium of a machine shall constitute delivery thereof for all purposes under this Act.”.

30. Sections 462 to 467 inclusive are repealed. Sections 462 to 467 inclusive repealed

31. Section 468, subsection (2) is amended by striking out the words “of if” and by substituting the words “or if”. Section 468 amended

32. Schedule D in the Statutory Conditions, Automobile is amended,— Schedule D amended

(a) by adding the following immediately before section 1:

“In these statutory conditions, unless the context otherwise requires, the word ‘insured’ means a person insured by the policy, whether named or not.”;

(b) by striking out statutory conditions 3 and 3a and by substituting the following:

“3. Unless permission is expressly given by an indorsement of the policy and in consideration of an additional stated premium, the automobile shall not be rented or leased nor shall it be used,—

“(a) to carry explosives; or

“(b) as a taxicab, public omnibus, livery, jitney, or sightseeing conveyance or for carrying passengers for compensation or hire.

“3a. In the case of indemnity afforded by motor vehicle liability policies, the automobile shall not be used for the towing of a trailer owned or hired by the insured that is not covered by like indemnity by the insurer; nor shall a trailer so covered by the policy be towed by an automobile owned or hired by the insured that is not covered by like indemnity by the insurer.

“3b. In cases other than motor vehicle liability policies, the insurer shall not be liable for loss or damage that is caused directly or indirectly by bombardment, invasion, civil war, insurrection, re-

bellion, revolution, military or usurped power, or by operations of armed forces while engaged in hostilities, whether war be declared or not, or by civil commotion arising from any of the foregoing, unless the policy or an indorsement thereon expressly provides otherwise.”.

- (c) by striking out statutory condition 4 (1) and by substituting the following:

“4. (1) The insured shall promptly give to the insurer written notice, with all available particulars, of any accident involving loss or damage to persons or property, and of any claim made on account of accident; shall verify by affidavit or statutory declaration, if required by the insurer, that the claim arises out of the operation or use of the automobile and that the person operating or responsible for the operation of the automobile at the time of the accident is a person insured by the policy; and shall forward immediately to the insurer every writ, letter, document or advice received by him from or on behalf of the claimant.”;

- (d) by striking out statutory condition 5 (1) and by substituting the following:

“5. (1) Upon the occurrence of loss of or damage to the automobile, the insured shall, if the loss or damage is covered by this policy,—

“(a) forthwith give notice thereof, in writing, to the insurer, with fullest information obtainable at the time, and shall, at the expense of the insurer, and as far as reasonably possible, protect the automobile from further loss or damage, and any such further loss or damage accruing directly or indirectly from a failure to protect shall not be recoverable hereunder. No repairs shall be undertaken or any physical evidence of the loss or damage removed without the written consent of the insurer, except such repairs as are immediately necessary for the protection of the automobile from further loss or damage; or until the insurer has had a reasonable time to make the examination provided for in statutory condition 7;

“(b) deliver to the insurer, within ninety days of date of the loss or damage, a statutory declaration stating so far as the insured knows or believes, the place, time, cause and amount of the loss or damage, the interest of the insured and of all others therein, the incumbrances thereon, all other insurance, whether valid or not, covering the automobile, and that the loss or damage did not occur through any wilful act or neglect, procurement, means or connivance of the insured.”;

- (e) by striking out statutory condition 8;

(f) by renumbering statutory conditions 9 to 12 inclusive as 8 to 11 inclusive.

33. This Act shall come into force on a date to be fixed ^{Coming} by Proclamation of the Lieutenant Governor in Council. _{into force}

FOURTH SESSION
ELEVENTH LEGISLATURE

15 GEORGE VI

1951

BILL

An Act to amend The Alberta
Insurance Act

Received and read the

First time

Second time

Third time

HON. MR. GERHART.
