

Bill No. 82 of 1952.

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 Supervisor of the Motor Vehicle Branch is charged with the duties heretofore discharged by the Superintendent of Insurance and the Act is amended by substituting the Supervisor wherever the Superintendent is referred to.

Section 2 is amended. A new clause (a) defines "automobile insurance." The "Minister" is defined by an amendment to clause (b) so as to provide for the situation where one or more members of the Executive Council are assigned various duties under this Act by order in council, as where the Provincial Secretary is charged with the administration of the Act except as to the provisions with respect to public service and commercial vehicles where the Minister of Public Works is meant by the term "Minister". Clause (c) is amended to define "Supervisor" who now assumes the duties which were formerly performed by the Superintendent of Insurance.

Section 3 is repealed. This section charged the Provincial Secretary with the administration of the Act and is now repealed.

Section 5, clause (c) is amended to conform with section 8 with respect to the limit of one thousand dollars for damage to property involved in an accident.

Section 6a is amended by adding a new clause (i). The effect of this clause is to enable the Minister to discharge an impounded vehicle where the owner or driver deposits sufficient security to satisfy any judgment that may thereafter be recovered against the owner or driver of the impounded vehicle.

Section 7a, subsection (4) is amended. The effect of this amendment is to extend the time in which the Supervisor may enter a defence from fifteen to thirty days after service of notice on him.

Section 8 is amended. Subsection (1) is amended to make it clear that the Provincial Treasurer is not required to pay damages out of the Unsatisfied Judgment Fund where the accident resulting in the damage occurred outside of Alberta. A new clause (b) has been added to subsection (2). The new clause provides that a driver who is covered

by automobile insurance cannot obtain payment from the Unsatisfied Judgment Fund so as to relieve the insurance company from paying the claim or allowing an insurer to obtain, through the action of such a driver, reimbursements from the fund for a claim paid by the insurer. Clause (c) of subsection (2) is amended to make it clear that the judgment debtor is to be examined as to whether he was insured at the time of the accident in question and not whether he is insured at the time of the examination.

Section 9, subsection (1) is amended to make this subsection conform with the amendment made to subsection (1) of section 8.

A new section 9a is added. Where an action is brought against the Supervisor by reason of the identity of the driver or the owner not being known, or the owner, if known, not being liable, the new section provides that in such a case if the identity of either or both be ascertained before judgment, the action shall be discontinued against the Supervisor; but the costs of the action to the discontinuance shall be a debt due the person who brought the action against the owner or driver. Subsection (2) provides for the case where judgment was obtained against the Supervisor and then the identity of the owner or driver was ascertained. The plaintiff or the Provincial Treasurer may then apply to a judge of the Supreme Court for an order directing the amount of the damages awarded and costs up to and including the application be awarded to the applicant as a judgment of the court to be recovered against the owner or driver named as the respondent in the application. Upon such an application, subsection (3) authorizes the judge to hear evidence pertaining to the fact of ownership or operation of the motor vehicle at the time of the accident, and to the identification of the respondent as the unascertained owner or driver. The respondent is permitted by subsection (4) to enter a defence to the application by showing that the accident giving rise to the judgment was not caused by any negligence on his part. No application is to be successful against a respondent owner who shows, pursuant to subsection (5), that at the time of the accident the motor vehicle was without his consent in the possession of another, not his chauffeur. Subsection (5) also provides where the owner is ascertained before judgment the plaintiff or owner may show that the motor vehicle was not operated by the owner or his chauffeur but was in possession of another without the owner's consent, and in this case the action against the Supervisor may continue.

This Bill comes into force on the 1st day of July, 1952.

J. W. RYAN,
Acting Legislative Counsel.

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

BILL

No. 82 of 1952.

An Act to amend The Motor Vehicle Accident
Indemnity Act.

(Assented to _____, 1952.)

HER 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. The word "Superintendent" is struck out wherever it
occurs in this Act and the word "Supervisor" is substituted.

3. Section 2 is amended,—

Section 2
amended

(a) by re-lettering clause (a) as clause (aa);

(b) by inserting immediately before clause (aa) the
following new clause (a),—

"(a) 'automobile insurance' means automobile in-
surance as defined in *The Alberta Insurance* "automobile
Act;" insurance"

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

"(b) 'Minister' means that member or those mem- "Minister"
bers of the Executive Council charged, for the
time being by the Lieutenant Governor in
Council, with the administration of this Act;"

(d) by striking out clause (e) and by substituting the
following:

"(e) 'Supervisor' means the Supervisor of the Motor "Supervisor"
Vehicle Branch of that Department of the Pro-
vincial Government charged with the ad-
ministration of *The Vehicles and Highway*
Traffic Act."

4. Section 3 is repealed.

Section 3
repealed

5. Section 5, clause (c) is amended by adding im-
mediately after the word "to" the words "each motor vehicle
or other".

Section 5
amended

Section 6a
amended

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

“(j) the Minister is satisfied that the owner or driver of the vehicle has deposited security sufficient in the opinion of the Supervisor to satisfy any judgment that may thereafter be recovered against such owner or driver as a result of the accident subject to the limits as to the amount stated in section 5.”.

Section 7a
amended

7. Section 7a, subsection (4) is amended by striking out the word “fifteen” and by substituting the word “thirty”.

Section 8
amended

8. Section 8 is amended:

- (a) by adding immediately after the word “occasioned” where it occurs in subsection (1), the words “in Alberta”;
- (b) by adding immediately after the word “debtor” where it occurs in subsection (1) the words “within Alberta”;
- (c) by adding immediately after clause (a) of subsection (2) the following new clause:
“(b) that the application is not made by or on behalf of an insurer in respect of any amount paid or payable by the insurer by reason of the existence of a policy of automobile insurance and that no part of the amount sought to be paid out of the fund is sought in lieu of making a claim or receiving a payment which is payable by reason of the existence of a policy of automobile insurance and that no part of the amount so sought will be paid to an insurer to reimburse or otherwise indemnify such insurer by reason of the existence of a policy of automobile insurance;”;
- (d) by relettering clauses (b), (c), (d) and (e) of subsection (2) as clauses (c), (d), (e) and (f) respectively;
- (e) by striking out the words “is insured” where they occur in clause (c) of subsection (2), now relettered as clause (d), and by substituting the words “was insured at the time of the accident in question”.

Section 9
amended

9. Section 9, subsection (1) is amended,—

- (a) by adding immediately after the word “occasioned” the words “in Alberta”;
- (b) by adding immediately after the word “use” the words “within Alberta”.

New
section 9a
Where
identity
discovered
before action
is discon-
tinued

10. The following new section is added immediately after section 9:

“**9a.** (1) Subject to subsection (5), where an action is brought under section 9, and, before judgment is recovered therein, the identity of the owner or the driver, or both, of

the motor vehicle to which reference is made in this section is ascertained, no further proceedings in the action shall be taken; but the costs incurred in the action by the person bringing it shall be a debt due to him by the owner and by the driver of the motor vehicle severally, and may be added by that person to the amount of his claim against the owner or the driver or both.

“(2) Subject to subsection (5), where a judgment is recovered under section 9, and subsequently the identity of the owner or driver, or both, of the motor vehicle to which reference is made in this section is ascertained,—

“(a) the person who brought the action; or

“(b) if the judgment has been paid from the fund, the Provincial Treasurer;

may apply by way of originating notice to a judge of the Supreme Court of Alberta for an order directing that the amount of damages awarded by the judgment and the costs included therein, together with the costs of the application made under this section, be awarded to the applicant as a judgment of the court to be recovered against the owner or driver, or both, of the motor vehicle, as the case may be, who shall be named as respondent in the application.

“(3) Where an application is made under this section, the judge shall hear the evidence, and if he is satisfied that,—

“(a) the respondent named in the application was, at the time of the accident that caused the bodily injury or death giving rise to the action in which the judgment was recovered, the owner or driver, or both, of the motor vehicle involved in that accident; and

“(b) the respondent mentioned in clause (a) is the person whose identity the applicant was unable to ascertain, by reason of which inability the applicant obtained a judgment under subsection (3) of section 9;

he may make the order for which application is made; and the order shall be entered as a judgment of the court against the person or persons named therein and for the amount stated therein.

“(4) It shall be a defence to the making of an order under subsection (3) for a person named in the application to show that the accident, or the bodily injury or death giving rise to the action, was not caused by, or did not occur by reason of, any negligence or improper conduct on his part.

“(5) Where, in a case to which subsection (1) or (2) applies, it is the identity of the owner that is ascertained, if the plaintiff in the action or, in the case of an application under subsection (2), the owner, satisfies the judge that at the time of the accident the motor vehicle was, without the consent of the owner, in the possession of a person other

than the owner or his chauffeur, the action may be continued and any application under subsection (2) as against the owner shall be dismissed.”.

Coming
into force

11. This Act shall come into force on the first day of July, 1952.

NO. 82.

FIFTH SESSION
ELEVENTH LEGISLATURE

1 Elizabeth II

1952

BILL

An Act to amend The Motor Vehicle
Accident Indemnity Act.

Received and read the

First time

Second time.....

Third time.....

HON. MR. GERHART.
