

No. 37

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3rd Session, 13th Legislature, Alberta  
5 Elizabeth II, 1957

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## **BILL 37**

A Bill to amend The Alberta Insurance Act

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HON. MR. HOOKE

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## Explanatory Note

### General. Uniform Insurance Law Revision.

While at first glance it may appear that the Fire Insurance Part has been rather extensively redrafted, a closer examination will establish that the protection presently afforded to the insured has not been reduced but on the contrary this has been somewhat extended.

The necessity for the revision arose from

- (a) the fact that but few policies today insure only against the peril of fire alone. Most policies are multi-peril or all risks and the practice is rapidly expanding. The revision eliminates doubts which have existed as to the application of the Part because of certain court decisions. At the same time it was necessary to provide greater flexibility in the law for the coverage now being given;
- (b) the fact that many of the statutory conditions are antiquated and, in many cases, serve no useful purpose as they are waived by insurers in most of their policies. These are statutory conditions which operate in favour of the insurer and required unnecessary printing.

Broadly the scope of the uniform revision may be summarized as follows:

(1) Duplicate sections have been eliminated or consolidated e.g. section 31 is primarily the fire licensing section. Section 207 (1) [192 (1)] of the Part also dealt with this aspect. Section 31 has been redrafted to include within its scope all of the licensing aspects. Section 205 [190] has been eliminated as it is, in effect, duplication of other provisions.

(2) As indicated in (a) above, the doubt as to the application of the Part has been eliminated by specific provisions in proposed section 206 [191]. The extended coverage now given with the peril of fire makes this necessary to avoid litigation.

(3) The scope of the coverage against the peril of fire has been defined by proposed section 206a. This is, in effect, the combination of the definition of fire insurance with present Statutory Conditions 6 and 12 and the exclusions in present Statutory Conditions 4 (b) and (d). Thus, in one place will be found the coverage where a policy insures against the peril of fire. Provision has been made by proposed section 206a for certain restrictions but subject to the protection for the insured of section 217 (1) [201 (1)].

(4) The number of statutory conditions has been reduced from 24 to 15. This will save considerable unnecessary printing. This reduction has been accomplished

(i) by transferring to the substantive law Statutory Conditions 2, 9, 22 and 24 relating to form of contract, notice to payees, waiver and subrogation respectively. These are not properly conditions but substantive statements of law. As noted in item (3) above, Statutory Conditions 4 (b) and (d), 6, 8 and 12 also have been transferred;

(ii) by deleting Statutory Conditions 3, 4 (c), 5 (a), (b) and (d), 8 and 21. These deal with property excluded unless specifically included, want of substantial chimneys, repairs, inflammable substances, vacancy and other insurance. In so far as present Statutory Condition 3 is concerned this is merely part of the property cover and is properly the subject of contractual provision. The insured cannot suffer in any way by this change. Statutory Condition 4 (c) is today of no practical importance to insurers. Statutory Condition 5 (a), (b) and (d) are waived by insurers in the vast majority of cases. If, for special risks, it is necessary to provide a similar condition this may be done under section 206a subject to the insured receiving the protection of section 217 [201]. Statutory Condition 8, with its

penalty, appears to be unnecessary in view of present section 213 [197a] in the revision. Any question as to elimination of what may be described as fire prevention conditions is shortly answered by the continuation of present Statutory Condition 7, the fact that they are generally waived in whole or in part, and by the provision of such conditions for special risks;

(iii) by the transfers to substantive law mentioned in item (3) above.

(5) As previously indicated, present section 217 (1) [201 (1)] in the revision has been extended to give a larger measure of protection to the insured but at the same time giving somewhat more flexibility to meet modern conditions and coverages, coverages which are in fact being given although doubt exists as to the legal situation under the present Part. Sections 211 [196] and 212 [197] dealing with co-insurance and limitations of liability clauses have been revised as section 211 [196] to make its application more certain. The present wording is ambiguous and creates substantial difficulties of interpretation.

It will be observed from the foregoing that the revision is not in principle one derogating from the protection of the insured—indeed in some aspects this is extended. It is merely to meet the existing and developing situation in the forms of contract being offered. To continue the Fire Insurance Part in its present form cannot be justified in the light of changing modern conditions and coverages.

It may be suggested that this revision “jettisons” the existing case law and therefore will “breed” more litigation. This suggestion is without sound foundation as most of the important conditions have been retained in their present or substantially their present form and therefore the case law continues to apply. Those eliminated cannot adversely affect the insured or encourage litigation.

Accident and Sickness Uniform Revision. (Clause 35 of this Bill)

Part VIII was first enacted in 1923. It was revised in 1926 but since that time very few changes have been made in it.

The purpose of this revision is three-fold:

1. To add a number of provisions designed to assure increased protection to policy-holders and beneficiaries.
2. To shorten and simplify the statutory conditions.
3. To permit a degree of flexibility in cases where it is appropriate to allow an insurer to vary or omit a statutory condition.

New provisions to protect policy-holders and beneficiaries—

1. New section 310 [286] requiring that exceptions from and reductions in benefits be clearly brought to the notice of the insured;
2. New paragraph (2) added to Statutory Condition 7 giving a claimant additional time, up to one year, to furnish proof of claim, as well as notice of claim as now provided, if it is not reasonably possible for him to comply with the periods prescribed;
3. New section 320a making innocent misrepresentations, except those relating to age, incontestable after the policy has been in force two years;
4. New section 320b stating that pre-existing conditions will not affect a claim unless specifically excluded from the policy
  - (a) if the loss occurs after a period of two years' cover, or

(b) at any time if the pre-existing condition was disclosed by the insured on his application;

5. New section 320c providing for the appointment of beneficiaries of an accidental death benefit and giving them a direct right of action against the insurer;
6. New section 320g, a facility of payment section, permitting insurers to pay up to \$2,000 to the relative of a deceased insured (or others who have incurred expense on his behalf).
7. New section 320h, a prohibition against giving undue prominence to the benefit provisions of a policy as compared to its restrictions.

#### Shortening and Simplification of Statutory Conditions—

Because many insureds do not carefully read their policies due to their length, the statutory conditions should be no longer than necessary. In this revision, the present statutory conditions have been shortened without sacrificing their purpose.

#### Flexibility—

In addition to a shortening of the conditions, there are numerous respects in which it would be entirely proper for an insurer to vary or omit some of the conditions so long as the insured is not thereby prejudiced. This is in part due to the fact that the statutory conditions are framed to cover all forms of accident and sickness insurance, whereas a particular policy may relate only to one form, e.g., hospital expense insurance. Furthermore, some of the conditions are designed to regulate the extent to which insurers may exercise some of the privileges given to them by the conditions, e.g., the right to terminate a policy. Where a policy may not be terminated, such a provision is naturally inappropriate.

In the result, the new revision will give more protection to the insured than the present Part VIII but will permit the simplification of policy forms and in this way should lead to a better understanding by the public of this form of insurance.

#### Fraternal Contracts—

The present exemption of fraternal societies and their contracts from Part VIII has been removed. The uniform revised Part VIII will apply to these societies and their contracts subject to the special provisions relating thereto in sections 310 [286], 312 [288] and 314 [290].

General. As this Bill refers to the Revised Statutes of Alberta, 1955, not yet circulated, every reference will contain in these Notes a reference within square brackets to the equivalent provision in the Revised Statutes of Alberta, 1942, chapter 201.

**2.** [Section 2, subsection (3)]. This deletion is intended to remove the restriction regarding compensation from the definition of agent and so bring persons acting as agents without compensation within the scope of the Act.

**3.** This combines the present sections 31 [31] and 207 (1) [192 (1)].

**4.** [1951, c. 44, s. 5 (2)] and section 34 (f) [33 (aa)]. This amendment and the amendment to section 398 [373] is intended to relieve the conflict with section 34 (f) [33 (aa)], which requires all insurers undertaking life insurance in Alberta to be registered with the Dominion Department of Insurance, except The Empire Life Insurance Company, and section 398 [373], which contemplates licensing fraternal, which are included in the definition of insurer section 2 (36) [2 (38)], and not registered with the Dominion Department of Insurance.

The date June 30th, 1951, does not require any insurer presently licensed in Alberta to register with the Dominion Department of Insurance.

# BILL

No. 37 of 1957

An Act to amend The Alberta Insurance Act

(Assented to \_\_\_\_\_, 1957)

**H**ER 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 159 of the Revised Statutes of Alberta, 1955, is hereby amended.

**2.** Section 2, clause 3 is amended by striking out the words “, for compensation,”.

**3.** Section 31 is struck out and the following is substituted:

“**31.** (1) Every insurer licensed to carry on fire insurance may, subject to its Act of incorporation, and to the restrictions prescribed by the licence, insure or reinsure any property in which the insured has an insurable interest against loss or damage by fire, lightning or explosion and insure or reinsure the same property against loss or damage from falling aircraft, earthquake, windstorm, tornado, hail, sprinkler leakage, riot, malicious damage, weather, water damage, smoke damage, civil commotion and impact by vehicles and against any one or more perils falling within such other classes of insurance as are prescribed by the regulations.

“(2) An insurer licensed to carry on fire insurance may, under a contract falling within Part V of this Act, insure an automobile against loss or damage.”.

**4.** Section 34, clause (f) is amended by striking out subclause (ii) and by substituting the following:

“(ii) an insurer licensed under this Act before the thirtieth day of June, 1951.”.

5. This new section is to enable the Superintendent to require, when necessary, the filing of additional current information regarding the affairs of the company on a regular basis.

6. Present section 99 [90] requires certain insurers to show total liability on its unmatured policies on the annual statement. The annual statement blanks, uniform in all provinces, and which are approved for filing here, require the insurer to show as a liability only 80% of the unearned premiums and this refers to all insurance except life. The amendment is required to bring it into line with the approved statement blanks, other provincial insurance Acts, and accepted practice.

7. [92]. This amendment is required to prevent insurers inflating their financial statements by the inclusion of unpaid capital subscribed which in reality is an asset only in the event of liquidation. Uniformity with other provinces will also be achieved.

8. [123] (a) This amendment is to cure a typographical error.

(b) This amendment is to require changes in the by-laws to be filed with the Superintendent of Insurance within a reasonable time, thereby permitting the Superintendent of Insurance to keep abreast of important changes in the by-laws.

9. Section 140 [129] reads:

"140. In the case of a provincial life insurance company

"(a) no salary, compensation or emolument shall be paid to any director for his services as director unless authorized by a vote of the members, in the case of a mutual company, or by vote of the shareholders and other members, if any, in the case of a company having a capital stock,

"(b) no salary, compensation or emolument shall be paid to any officer or trustee unless authorized by a vote of the directors, and

"(c) no salary, compensation or emolument amounting in any year to more than five thousand dollars shall be paid to any agent or employee unless the contract under which the amount becomes payable has been approved by the board of directors."

This section is equally applicable to other than life insurers and for the protection of policy-holders, creditors and shareholders of any provincial insurer is made to so apply.

10. Section 155 [144] reads:

"155. (1) If the directors of the company declare and pay any dividend when the company is insolvent or any dividend the payment of which renders the company insolvent, or diminishes the capital stock, they are jointly and severally liable, as well to the company as to the individual shareholders and the creditors, and, in the case of a life company, to the participating policy-holders, for all the debts of the company then existing, and for all thereafter contracted during their continuance in office.

**5.** The following new section is added immediately after section 95:

**“95a.** In addition to the annual statement required by section 95, the Superintendent may, in such form and at such intervals as he may prescribe, require statements to be filed with him pertaining to the financial affairs or general operations of the insurer.”.

**6.** Section 99 is struck out and the following is substituted:

**“99.** In the case of all classes of insurance other than life insurance, and in the case of all insurers, the statement shall show as a liability of the insurer eighty per cent of the actual portions of unearned premiums on all business in force on the thirty-first day of December then last past, or eighty per cent of fifty per cent of the premiums written in its policies and received in respect of contracts having one year or less to run and *pro rata* on those for longer periods.”.

**7.** Section 101 is amended by adding immediately after the word “equipment,” the words “or unpaid capital,”.

**8.** Section 134 is amended

- (a) as to subsection (2) by striking out the word “appeal,” and by substituting the word “repeal,”
- (b) by adding immediately after subsection (2) the following new subsection:

“(3) The directors shall deliver to the Superintendent, within one month after the passing of a by-law of the company or of any repeal, amendment or re-enactment thereof, a certified copy of the by-law and of any repeal, amendment or re-enactment thereof.”.

**9.** Section 140 is struck out and the following is substituted:

**“140.** In the case of a provincial insurance company no salary, compensation or emolument shall be paid to any director for his services as director unless authorized by a vote of the members, in the case of a mutual company, or by vote of the shareholders and other members, if any, in the case of a company having a capital stock.”.

**10.** Section 155 is amended

- (a) by striking out subsection (1) and by substituting the following:

**“155.** (1) If the directors of the company declare and pay any dividend or authorize and pay any director’s fee when the company is insolvent or

“(2) Notwithstanding subsection (1), if any director present when the dividend is declared does forthwith, or if any director then absent does, within fourteen days after he becomes aware of the dividend being declared, publish a protest in at least three issues of any newspaper published at the place in which the head office or chief place of business of the company is situated, or if there is no newspaper published there, in at least three issues of the newspaper published nearest thereto, then that director thereby, and not otherwise, exonerates himself from the liability.”

This broadening of the liability of directors is in keeping with the intent of the section as now constituted and will serve both as a deterrent to the withdrawal of funds for themselves while the company's capital stock is impaired or which would render the capital stock impaired and also as increased protection to policyholders, creditors and shareholders.

**11.** Section 187 [172]. This section transfers section 209 [194] in Part V dealing with fire insurance to Part IV dealing with contracts with minor changes in wording. Section 209 [194] is to be repealed. A similar provision appears in the Parts of the Act dealing with accident and sickness insurance (section 309), automobile insurance (section 282) and hail insurance (section 333), and subsection (2b) provides that this new provision does not apply to these contracts of insurance. Contracts of guarantee insurance, being of a special nature, are also exempted.

**12.** Section 188 [173]. This is comparable to present section with the exception of subsection (2) which is omitted. Subsections (6) and (7) are also omitted, being covered by sections 231 (2) [212 (2)] and 232 (5) [213 (5)].

pay any dividend or director's fee the payment of which renders the company insolvent or diminishes the capital stock thereof, they are jointly and severally liable, as well to the company as to the individual shareholders and creditors thereof, and, in the case of a life company, to the participating policy-holders, for all the debts of the company then existing, and for all thereafter contracted during their continuance in office, respectively.”,

- (b) as to subsection (2)
  - (i) by adding immediately after the words “is declared” the words “or the director's fee is authorized”,
  - (ii) by adding immediately after the words “being declared” the words “or the director's fee being authorized”.

**11.** Section 187 is amended by adding immediately after subsection (2) the following new subsections:

“(2a) Every policy shall contain the name of the insurer, the name of the insured, the name of the person or persons to whom the insurance money is payable, the premium for the insurance, the subject matter of the insurance, the indemnity for which the insurer may become liable, the event on the happening of which the liability is to accrue, and the term of the insurance.

“(2b) Subsection (2a) does not apply to contracts of accident and sickness insurance, automobile insurance, guarantee insurance or hail insurance.”.

**12.** Section 188 is struck out and the following is substituted:

“**188.** (1) Where the policy has been delivered the contract is as binding on the insurer as if the premium had been paid, although it has not in fact been paid, and although delivered by an officer or agent of the insurer who had not authority to deliver it.

“(2) The insurer may sue for the unpaid premium and may deduct the amount thereof from the amount for which he is liable under the contract of insurance.

“(3) Where a cheque, bill of exchange or promissory note or any promise to pay is given, whether originally or by way of renewal, for the whole or part of any premium and the cheque, bill of exchange or promissory note or other promise to pay, is not honoured according to its tenor, the insurer may terminate the contract forthwith by giving written notice by registered mail.

“(4) In making the deduction mentioned in subsection (2), the insurer shall allow to the insured the same discount upon any unpaid premium as he would be entitled to if the unpaid premium were paid in cash at the date of the loss.”.

**13. Section 189 [174]. Subsection (1) reads:**

"189. (1) Every insurer shall, immediately upon receipt of notice of any claim under a contract of insurance, forward to the insured or person to whom the insurance money is payable printed forms upon which to make the proof of loss required under the contract."

**14. Section 190 [175]. This section is reworded for clarification.**

**15. Section 191 [176] is removed and a new section added dealing with the matter of relief from forfeiture. Specific provisions dealing with relief from forfeiture are provided in the Fire Part (section 215 [199]), Automobile Part (section 287 [265]), Accident and Sickness Part (section 320 [295]) and the Hail Part (section 347 [322]) and this section provides relief from forfeiture of general application to all other contracts of insurance except life insurance.**

**16. Section 200 [185]. (a) This subsection will recognize the difficulty in obtaining a written signature or countersignature in the case of machine-vended policies and will allow facsimile signatures and counter signatures.**

Subsections (1) and (2) read:

"200. (1) No insurer licensed under this Act to transact insurance within the Province shall make, write, place or cause to be made, written or placed, any policy, duplicate policy or contract of insurance upon any matter or thing, real or personal, situated in the Province or described in any policy, duplicate policy or contract of insurance as situated in the Province, unless the risk has been approved by an agent of the insurer who is a resident within the Province and who holds a certificate of authority from the Superintendent.

"(2) Such agent shall

"(a) sign or countersign all policies so issued and make a record of them in books provided for that purpose, and

"(b) when the premium stipulated in the policy, duplicate policy or contract of insurance is paid, receive the commission, or a part thereof that is not less than one-third of the total commission paid in respect of the portion of the risk situated in the Province."

(b) Will enable the reference in this subsection to section 10 of The Corporations Taxation Act to be applied without confusion to any tax that may be substituted therefor.

**17. This new section clarifies the position of the insurer in the case of cancellation of a policy carrying an assignment of refund as is the case in financed contracts. The new section is based on the 1956 uniform law revision recommendations.**

**13.** Section 189 is amended by striking out subsection (1) and by substituting the following:

**“189.** (1) Every insurer, immediately upon receipt of a request, and in any event not later than sixty days after receipt of notice of loss, shall furnish to the insured or person to whom the insurance money is payable, forms upon which to make the proof of loss required under the contract.”.

**14.** Section 190 is struck out and the following is substituted:

**“190.** No action lies for the recovery of money payable under a contract of insurance until the expiration of sixty days after proof, in accordance with the provisions of the contract,

“(a) of the loss, or

“(b) of the happening of the event upon which the insurance money is to become payable,

or of such shorter period as may be fixed by the contract of insurance.”.

**15.** Section 191 is struck out and the following is substituted:

**“191.** Where there has been imperfect compliance with a condition or term of the contract as to proof of loss to be given by the claimant, and a consequent forfeiture or avoidance of the insurance, in whole or in part, and the court deems it inequitable that the insurance be forfeited or avoided on that ground, the court may relieve against the forfeiture or avoidance on such terms as it deems just.”.

**16.** Section 200 is amended

(a) by adding immediately after subsection (2) the following new subsection:

“(2a) A facsimile signature or countersignature shall be deemed to be compliance with subsection (2) in the case of machine vended policies.”,

(b) as to subsection (8) by adding immediately after the words “*The Corporations Taxation Act*” the words “or any provincial tax substituted therefor,”.

**17.** The following new section is added immediately after section 202:

**“202a.** (1) Where an insured assigns the right to refund of premium that may accrue by reason of the cancel-

**18.** Section 205 [190] reads:

"205. In this Part,

"(a) "contract"

"(i) means a contract of insurance against loss of or damage to property in the Province or in transit therefrom or thereto, caused by fire, lightning or explosion, and

"(ii) includes a policy, certificate, interim receipt, renewal receipt or writing evidencing the contract, whether sealed or not, and a binding oral agreement;

"(b) "property" includes use and occupancy, rents, profits and charges where these are the subject matter of the insurance."

Clause (a) appears unnecessary in view of proposed section 206 [191]. Clause (b) is unnecessary because of the earlier definition of property in present section 2 (51) [2 (53)].

**19.** Section 206 [191] reads:

"206. This Part applies to fire insurance and to any insurer carrying on the business of fire insurance in the Province."

This amendment is designed to carry into effect the purpose of the uniformity revision insofar as it affects the scope of this Part.

**20.** This section is designed to define the scope of the peril of fire.

lation or termination of a contract of insurance under the terms thereof and notice of the assignment is given by the assignee to the insurer, the insurer shall pay any such refund to the assignee notwithstanding any condition in the contract, whether prescribed under this Act or not, requiring the refund to be paid to the insured or to accompany any notice of cancellation or termination to the insured.

“(2) Where the condition in the contract dealing with cancellation or termination by the insurer provides that the refund shall accompany the notice of cancellation or termination, the insurer shall include in the notice a statement that in lieu of payment of the refund in accordance with the condition the refund is being paid to the assignee under this section.”.

**18.** Section 205 is repealed.

**19.** Section 206 is struck out and the following is substituted:

“**206.** (1) This Part applies to insurance against loss of or damage to property arising from the peril of fire in any contract made in the Province except,

“(a) insurance falling within the classes of aircraft, automobile, boiler and machinery, inland transportation, marine, plate glass, sprinkler leakage and theft insurance,

“(b) where the subject matter of the insurance is rents, charges or loss of profits, or

“(c) where the peril of fire is an incidental peril to the coverage provided.

“(2) Notwithstanding subsection (1) this Part applies to insurance of an automobile as provided in subsection (2) of section 31.”.

**20.** The following new section is added immediately after section 206:

“**206a.** Subject to subsection (4) of this section and to clause (a) of subsection (1) of section 217, in any contract to which this Part applies the contract shall be deemed to cover the insured property,

“(a) against fire (whether resulting from explosion or otherwise) not occasioned by or happening through

**21.** This subsection is incorporated in the new section 31 [31].

**22.** Section 208 [193]. The repeal of this subsection was uniformly recommended at the 1938 Conference of Superintendents. It is now required to bring us into uniformity with other provinces and to give relief to those insurers now restricted to writing policies for a maximum term of three years. Uniformity with other classes such as Automobile and Accident and Sickness will also be achieved. Subsection (1) reads:

"208. (1) No contract shall be made for a term exceeding three years, but any contract may be renewed from time to time for a further period not exceeding three years by the delivery of a renewal receipt identifying the policy by number, date or otherwise, or by a new premium note."

- “(i) its undergoing any process involving the application of heat;
  - “(ii) riot, civil commotion, war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military power;
  - “(b) against lightning, but excluding destruction or loss to electrical devices or appliances caused by lightning or other electrical currents unless fire originates outside the article itself and only for such destruction or damage as occurs from such fire;
  - “(c) against explosion (not occasioned by or happening through any of the perils specified in subclause (ii) of clause (a)) of natural, coal or manufactured gas in a building not forming part of a gas works, whether fire ensues therefrom or not.
- “(2) Unless otherwise specifically provided therein, in any contract to which this Part applies, nuclear change or radioactivity shall not be considered to be a fire or an explosion but this provision shall not be construed so as to exclude loss or damage caused by fire or explosion resulting from nuclear change or radioactivity.
- “(3) Where property insured under a contract covering at a specified location is necessarily removed to prevent loss or damage or further loss or damage thereto, that part of the insurance under the contract that exceeds the amount of the insurer’s liability for any loss incurred shall, for seven days only or for the unexpired term of the contract if less than seven days, cover the property removed and any property remaining in the original location in the proportions that the value of the property in each of the respective locations bears to the value of the property in them all.
- “(4) Nothing in subsection (1) precludes an insurer giving more extended insurance against the perils mentioned therein, but in that case this Part does not apply to the extended insurance.
- “(5) An insurer licensed to carry on fire insurance may include in its insurance contracts a clause or endorsement providing that, in the case of livestock insured against death or injury caused by fire or lightning, the word “lightning” shall be deemed to include other electrical currents.”.

**21.** Subsection (1) of section 207 is repealed.

**22.** Subsection (1) of section 208 is repealed.

**23.** Section 209 [194]. Re-enacted as 187 (2a), (see clause 11 of this Bill.) The section is in substance the present Statutory Condition 2.

**24.** This is in substance the present Statutory Condition 9 but requires the same notice of cancellation of a policy to a mortgagee as to the insured. The present statutory condition specifies only "reasonable notice".

**25.** Section 210 [195]. This replaces present section 210 [195] dealing with statutory conditions.

Statutory Condition 1 This is identical with present Statutory Condition 1 except that the words "as to the property in respect of which the misrepresentation or omission is made" have been slightly amended.

Statutory Condition 2. This is Statutory Condition 4 (a). Statutory Condition 4 (c) and Statutory Condition 3 have been deleted; while Statutory Conditions 4 (b) and 4 (d) have been carried into section 206a.

Statutory Condition 3. This, in substance, reproduces present clause (c) of Statutory Condition 5. The remainder of Statutory Condition 5 has been deleted.

Statutory Condition 4. This reproduces present Statutory Condition 7 without change.

**23.** Section 209 is struck out and the following is substituted:

**"209.** After an application for insurance is made, if it is in writing, any policy sent to the insured shall be deemed to be intended to be in accordance with the terms of the application, unless the insurer points out in writing the particulars wherein it differs from the application, in which case the insured may, within two weeks after the receipt of the notification, reject the policy."

**24.** The following new section is added immediately after section 209:

**"209a.** (1) Where the loss, if any, under a contract has, with the consent of the insurer, been made payable to a person other than the insured, the insurer shall not cancel or alter the policy to the prejudice of that person without notice to him.

"(2) The length of and manner of giving the notice under subsection (1) shall be the same as notice of cancellation to the insured under the statutory conditions in the contract."

**25.** Section 210 is struck out and the following is substituted:

**"210.** (1) The conditions set forth in this section shall be deemed to be part of every contract in force in the Province and shall be printed on every policy with the heading "Statutory Conditions" and no variation or omission of or addition to any Statutory Condition shall be binding on the insured.

"(2) In this section "policy" does not include interim receipts or binders."

#### Statutory Conditions

- Misrepresentation** 1. If any person applying for insurance falsely describes the property to the prejudice of the insurer, or misrepresents or fraudulently omits to communicate any circumstance which is material to be made known to the insurer in order to enable it to judge of the risk to be undertaken, the contract shall be void as to any property in relation to which the misrepresentation or omission is material.
- Property of Others** 2. Unless otherwise specifically stated in the contract, the insurer is not liable for loss or damage to property owned by any person other than the insured, unless the interest of the insured therein is stated in the contract.
- Change of Interest** 3. The insurer shall be liable for loss or damage occurring after an authorized assignment under the Bankruptcy Act or change of title by succession, by operation of law, or by death.
- Material Change** 4. Any change material to the risk and within the control and knowledge of the insured shall avoid the contract as to the part affected thereby, unless the change is promptly notified in writing to the insurer or its local agent; and the insurer when so notified may return

Statutory Condition 5. This is in substance the same as present Statutory Condition 10.

Statutory Condition 6. This is similar to present Statutory Condition 15.

the unearned portion, if any, of the premium paid and cancel the contract, or may notify the insured in writing that, if he desires the contract to continue in force, he must, within fifteen days of the receipt of the notice, pay to the insurer an additional premium; and in default of such payment the contract shall no longer be in force and the insurer shall return the unearned portion, if any, of the premium paid.

**Termination of Insurance**

5. (1) The insurance may be terminated
- (a) subject to the statutory provision relating to cases where loss under the contract has, with the consent of the insurer, been made payable to some person other than the insured, by the insurer giving to the insured at any time fifteen days' notice of cancellation by registered mail, or five days' notice of cancellation personally delivered, and, if the insurance is on the cash plan, by refunding the excess of premium actually paid by the insured beyond the pro rata premium for the expired time;
- (b) if on the cash plan, by the insured giving written notice of termination to the insurer, in which case the insurer shall upon surrender of this policy refund the excess of premium actually paid by the insured beyond the customary short rate for the expired time.
- (2) Repayment of the excess premium may be made by money, postal or express company money order, or by cheque payable at par.
- (3) If the notice is given by registered letter the repayment shall accompany the notice.
- (4) The fifteen days mentioned in clause (a) of sub-paragraph (1) of this condition shall commence to run from the day following the receipt of the registered letter at the post office to which it is addressed.

**Requirements After Loss**

6. (1) Upon the occurrence of any loss of or damage to the insured property, the insured shall, if such loss or damage is covered by the contract, in addition to observing the requirements of Conditions 9, 10 and 11,
- (a) forthwith give notice thereof in writing to the insurer;
- (b) deliver as soon as practicable to the insurer a proof of loss verified by statutory declaration
- (i) giving a complete inventory of the destroyed and damaged property and showing in detail quantities, costs, actual cash value and particulars of amount of loss claimed;
- (ii) stating when and how the loss occurred, and if caused by fire or explosion due to ignition, how the fire or explosion originated, so far as the insured knows or believes;
- (iii) stating that the loss did not occur through any wilful act or neglect or the procurement, means or connivance of the insured;
- (iv) showing the amount of other insurances and the names of other insurers;
- (v) showing the interest of the insured and of all others in the property with particulars of all liens, encumbrances and other charges upon the property;
- (vi) showing any changes in title, use, occupation, location, possession or exposures of the property since the issue of the contract;
- (vii) showing the place where the property insured was at the time of loss:
- (c) if required to give a complete inventory of undamaged property and showing in detail quantities, cost, actual cash value;

Statutory Condition 7. This is a reproduction of present Statutory Condition 16.

Statutory Condition 8. This is in substance present Statutory Condition 14 but based upon Automobile Insurance Statutory Condition 11.

Statutory Condition 9. This is similar to present Statutory Condition 11.

Statutory Condition 10. This is substantially the same as present Statutory Condition 13.

Statutory Condition 11. This replaces present Statutory Condition 17, adopting appraisal rather than arbitration.

Statutory Condition 12. This is identical with present Statutory Condition 18.

Statutory Condition 13. This is identical with present Statutory Condition 19, except for extension of times.

(d) if required and if practicable, produce books of account, warehouse receipts and stock lists, and furnish invoices and other vouchers verified by statutory declaration, and furnish a copy of the written portion of any other contract.

(2) The evidence furnished under clauses (c) and (d) of subparagraph (1) of this condition shall not be considered proofs of loss within the meaning of Conditions 12 and 13.

**Fraud** 7. Any fraud or wilfully false statement in a statutory declaration in relation to any of the above particulars, shall vitiate the claim of the person making the declaration.

**Who may give notice and proof** 8. Notice of loss may be given, and proof of loss may be made, by the agent of the insured named in the contract in case of absence or inability of the insured to give the notice or make the proof, and absence or inability being satisfactorily accounted for, or in the like case, or if the insured refuses to do so, by a person to whom any part of the insurance money is payable.

**Salvage** 9. (1) The insured, in the event of any loss or damage to any property insured under the contract, shall take all reasonable steps to prevent further damage to any such property so damaged and to prevent damage to other property insured hereunder including, if necessary, its removal to prevent damage or further damage thereto.

(2) The insurer shall contribute pro rata towards any reasonable and proper expenses in connection with steps taken by the insured and required under sub-paragraph (1) of this condition according to the respective interests of the parties.

**Entry, Control Abandonment** 10. After any loss or damage to insured property, the insurer shall have an immediate right of access and entry by accredited agents sufficient to enable them to survey and examine the property, and to make an estimate of the loss or damage, and, after the insured has secured the property, a further right of access and entry sufficient to enable them to make appraisal or particular estimate of the loss or damage, but the insurer shall not be entitled to control or possession of the insured property, and without the consent of the insurer there can be no abandonment to it of insured property.

**Appraisal** 11. (1) If any difference arises as to the value of the property insured, the property saved or the amount of the loss, that value and amount shall, whether the right to recover on the contract is disputed or not, be ascertained by two competent and disinterested appraisers, the insured and the insurer each selecting one, and the two so chosen then selecting a competent and disinterested umpire.

(2) The appraisers together shall then estimate and appraise the loss or damage; stating separately the sound values and damage, and failing to agree, shall submit their differences to the umpire; and the finding in writing of any two shall determine the value of the property insured, the property saved and the amount of loss.

(3) The parties thereto shall pay the appraisers respectively selected by them, and shall bear equally the expense of the appraisal and umpire.

**When Loss Payable** 12. The loss shall be payable within sixty days after completion of the proof of loss, unless the contract provides for a shorter period.

**Replacement** 13. (1) The insurer, instead of making payment, may repair, rebuild, or replace the property damaged or lost, giving written notice of its intention so to do within thirty days after receipt of the proofs of loss.

Statutory Condition 14. This is identical with present Statutory Condition 20.

Statutory Condition 15. This is identical with present Statutory Condition 23 except the word "head" has been deleted before "office".

**26.** Sections 211 and 212 [196 and 197]. This section replaces sections 211 and 212 but in a very much abbreviated form.

**27.** Section 213 [197a]. This proposed uniform revision eliminates the need for the present Statutory Condition 8. Subsection (4) is new, intended to provide a method of ascertaining rateable proportions when there are deductibles. In view of the proposed revision of section 206 [191], subsection (5) of the present section 213 [197a] is unnecessary.

(2) In that event the insurer shall commence to so repair, rebuild, or replace the property within forty-five days after receipt of the proofs of loss, and shall thereafter proceed with all due diligence to the completion thereof.

**Action** 14. Every action or proceeding against the insurer for the recovery of any claim under or by virtue of this contract shall be absolutely barred unless commenced within one year next after the loss or damage occurs.

**Notice** 15. (1) Any written notice to the insurer may be delivered at, or sent by registered post to, the chief agency or office of the insurer in the Province or delivered or sent to any authorized agent of the insurer therein.

(2) Written notice may be given to the insured by letter personally delivered to him or by registered letter addressed to him at his latest post office address notified to the insurer, or, where no address is notified and the address is not known, addressed to him at the post office of the agency, if any, from which the application was received.

**26.** Sections 211 and 212 are struck out and the following is substituted:

**"211.** A contract containing a co-insurance average, average distribution or other clause that requires or may require the insured to contribute to any loss shall have printed or stamped upon its face in red ink the words: "This policy contains a clause which may limit the amount payable", and unless those words are so printed or stamped the clause is not binding upon the insured."

**27.** Section 213 is struck out and the following is substituted:

**"213.** (1) Where, on the happening of any loss or damage to property insured, there is in force more than one contract covering the same interest, the insurers under the respective contracts shall each be liable to the insured for its rateable proportion of the loss unless it is otherwise expressly agreed in writing between the insurers.

"(2) For the purpose of subsection (1), a contract shall be deemed to be in force notwithstanding any term thereof that the policy shall not cover, come into force, attach, or become insurance with respect to the property until after full or partial payment of any loss under any other policy.

"(3) Nothing in subsection (1) affects the validity of any divisions of the sum insured into separate items, or any limits of insurance on specified property, or any clause referred to in section 211 or any contract condition limiting or prohibiting the having or placing of other insurance.

"(4) Nothing in subsection (1) affects the operation of any deductible clause and

"(a) where one contract contains a deductible the *pro rata* proportion of the insurer under that contract shall be first ascertained without regard to the clause and then the clause shall be applied only to affect the amount of recovery under that contract; and

**28.** Section 214 [198] reads:

"214. No red ink shall be used on the face of a policy except for the name, address and emblem of the insurer, the policy number and for the purposes mentioned in this Act."

This section is no longer considered necessary.

**29.** Section 215 [199] with slight verbal change only.

**30.** Subsections (1) and (2) of section 217 [201 (1)]. (a) The new subsection (1) of section 217 retains the basic provisions of the present section although clause (a) is new. This has been inserted because the Fire Insurance Part, as amended by this Bill, in terms has a broader application than the existing Part in that it covers the peril of fire in any contract other than those specifically excluded.

(b) This change is necessary because of the renumbering of the statutory conditions.

**31.** Subsection (1) follows present Statutory Condition 22 and is comparable to section 289 [267] of the Automobile Insurance Part. Present Statutory Condition 22 has been eliminated. Subsection (2) follows Automobile Insurance Statutory Condition 8.

“(b) where more than one contract contains a deductible the *pro rata* proportion of the insurers under those contracts shall be first ascertained without regard to the deductible clauses and then the highest deductible shall be *pro rated* among the insurers with deductibles and these *pro rated* amounts shall affect the amount of recovery under those contracts.

“(5) Notwithstanding subsection (1), insurance on identified articles shall be a first loss insurance as against all other insurance.”.

**28.** Section 214 is repealed.

**29.** Section 215 is struck out and the following is substituted:

“**215.** Where there has been imperfect compliance with a statutory condition as to the proof of loss to be given by the insured and a consequent forfeiture or avoidance of the insurance, in whole or in part, and the court deems it inequitable that the insurance should be forfeited or avoided on that ground, the court may relieve against the forfeiture or avoidance on such terms as seem just.”.

**30.** Section 217 is amended

(a) by striking out subsections (1) and (2) and by substituting the following:

“**217.** (1) Where a contract

“(a) excludes any loss that would otherwise fall within the coverage prescribed by section 206a, or

“(b) contains any stipulation, condition or warranty that is or may be material to the risk including, but not restricted to, a provision in respect to the use, condition, location or maintenance of the insured property,

the exclusion, stipulation, condition or warranty shall not be binding upon the insured if it is held to be unjust or unreasonable by the court before which a question relating thereto is tried.”,

(b) as to subsection (3) by striking out the words and figure “by arbitration under statutory condition 17” and by substituting the words and figure “under statutory condition 11”.

**31.** The following new sections are added immediately after section 217:

“**217a.** (1) No term or condition of a contract shall be deemed to be waived by the insurer in whole or in part, unless the waiver is clearly expressed in writing signed by a person authorized for that purpose by the insurer.

Section 217b replaces Statutory Condition 24 which, in the case of *Globe & Rutgers vs. Truedall*, 60 O.L.R. 227 was held to be of no value whatsoever. It follows section 290 [268] in the Automobile Insurance Part.

**32.** Section 283 [262]. See note after clause 34 of this Bill.

Subsection (1) begins: "Subject to the provisions of subsection (2) and (3) of this section and of the provisions of sections 284 and 303.....".

**33.** Section 297 [275]. This amendment will require the increase of the minimum liability coverage for automobile policies from \$5,000, \$10,000 and \$1,000 to \$10,000, \$20,000 and \$2,000.

**34.** Section 301 [277]. This amendment is to revise and consolidate the different sections of the Automobile Part (subsections (2) and (3) of section 283 [262] and section 301 [277]) which deal with approval of special forms by the Superintendent, and was recommended by the 1956 Conference of Superintendents of Insurance.

“(2) Neither the insurer nor the insured shall be deemed to have waived any term or condition of a contract by any act relating to the appraisal of the amount of loss or to the delivery and completion of proofs, or to the investigation or adjustment of any claim under the contract.

“**217b.** (1) The insurer, upon making any payment or assuming liability therefor under a contract of fire insurance, is subrogated to all rights of recovery of the insured against any person, and may bring action in the name of the insured to enforce such rights.

“(2) Where the net amount recovered, after deducting the costs of recovery is not sufficient to provide a complete indemnity for the loss or damage suffered, that amount shall be divided between the insurer and the insured in the proportions in which the loss or damage has been borne by them respectively.”.

**32.** Section 283 is amended

- (a) as to subsection (1) by striking out the words and figures “subsections (2) and (3) of this section and the provisions of section 284” and by substituting the words and figures “sections 284, 301”,
- (b) by striking out subsections (2) and (3).

**33.** Section 297 is struck out and the following is substituted:

“**297.** (1) Every owner’s policy and driver’s policy shall,

“(a) in case of bodily injury or death, insure to the limit of at least ten thousand dollars for loss or damage resulting from bodily injury to or the death of any one person, and, subject to such limit for any one person so injured or killed, to the limit of at least twenty thousand dollars for bodily injury to or the death of two or more persons in any one accident, or

“(b) in case of property damage, insure to the limit of at least two thousand dollars for damage to property resulting from any one accident.

“(2) The limits specified in subsection (1) are exclusive of interest and costs.”.

**34.** Section 301 is struck out and the following is substituted:

“**301.** (1) Where any provisions of this Part, including any Statutory Condition, is wholly or partly inapplicable by reason of the requirements of any Act or, in the opinion of the Superintendent, is unsuitable to any special form of contract, he may approve a form of policy sufficient or appropriate to insure the risks required or proposed to be insured.

“(2) Where a form of policy is so approved, the Superintendent shall specify in writing the Statutory Condition or other provision to which subsection (1) refers and send a copy of the writing to the insurer; and thereafter the contract in the form so approved shall have effect according to its terms, notwithstanding that those terms conflict with, or omit, the condition or other provision so specified.”.

**35. New Accident and Sickness Insurance Part added.**

New 306. (a) "contract". The purpose of this definition is to save repeating in the balance of the Part a description of the type of contract governed by the Part. The terms "accident insurance" and "sickness insurance" are defined in section 2 [2].

(b) "creditor's group accident insurance" and "creditor's group sickness insurance". These terms are used in the definition of "group accident insurance" and "group sickness insurance", post. As provided in section 307 (3) [283 (3)], certain sections of this Part are made applicable to the latter two types of group insurance. These sections, which are derived from the Life Insurance Part of the Act, are not appropriate to creditor's group insurance, where, as the above definition indicates, a creditor insures his debtors and thus payment of the benefits is made to him. The above definition follows closely the definition of "creditor's group life insurance" in the Life Part.

(c) "group accident insurance" and "group sickness insurance". This definition follows closely the definition of "group life insurance" in the Life Part. This wording is somewhat broader than the description of the term in present section 306 (3) [282 (3)]. By section 307 (3), post, certain sections of the Part are made applicable to group insurance.

(d) "insured". This definition and the definition of "person insured" should be read together. Frequently the "insured" and the "person insured" are the same person but where a contract insures more than one person the use of these terms in the balance of this Part makes it possible to distinguish between the provisions applicable to each.

(e) "person". This definition is similar to the definition of "person" in the Life Part.

(f) "person insured". See note to definition of "insured", supra.

Section 306 [282]. Present section 306 (1) [282 (1)] has been clarified.

(2) The exceptions in present section 306 (2) [282 (2)] for disability and double indemnity insurance are simplified by a reference to these classes of insurance as defined in section 2 [2]. Present section 306 (3) [282 (3)] is dealt with in the definitions of "group accident insurance" and "group sickness insurance" and in subsection (3) hereof.

Clause (e) replaces present subsection (4) of section 306 [282]. Present section 307 [283] is no longer necessary in view of the addition in this revision of sections 308, 315 to 319, 320e and 320j.

(3) Present section 306 (3) [282 (3)] provides that this Part, except present section 320 [295], shall not apply to group insurance. It also states that certain sections of the Life Part shall apply to this class of insurance. These sections are now reproduced in this Part and apply to group insurance. Also new sections 320c, 320f and 320g are made applicable to group insurance.

Section 308. This section is similar to section 222 [205] of the Life Part which presently applies by cross-reference.

**35.** Part VIII, sections 306 to 320 inclusive, is struck out and the following is substituted:

**"PART VIII**

**"ACCIDENT AND SICKNESS INSURANCE**

**"Interpretation**

**"306.** In this Part,

- "(a)** "contract" means a contract of accident insurance or of sickness insurance or of both;
- "(b)** "creditor's group accident insurance" and "creditor's group sickness insurance" mean, respectively, accident insurance and sickness insurance effected by a creditor whereby the lives or well-being or the lives and well-being of a number of his debtors are insured severally under a single contract;
- "(c)** "group accident insurance" and "group sickness insurance" mean, respectively, accident insurance and sickness insurance, other than creditor's group accident insurance and creditor's group sickness insurance, whereby the lives or well-being or the lives and well-being of a number of persons are insured severally under a single contract between an insurer and an employer or other person contracting with the insurer;
- "(d)** "insured" means a person who makes a contract with an insurer;
- "(e)** "person" includes a firm, partnership or corporation, an unincorporated society or association, and a trade union;
- "(f)** "person insured" means a person in respect of an accident to whom, or in respect of whose sickness, benefits are payable under a contract.

**"Application of Part**

**"307.** (1) This Part applies to accident insurance and to sickness insurance and to an insurer carrying on the business of accident insurance or sickness insurance or both.

**"(2)** This Part does not apply to

- "(a)** creditor's group accident insurance,
- "(b)** creditor's group sickness insurance,
- "(c)** disability insurance,
- "(d)** double indemnity insurance, or
- "(e)** insurance provided under section 299.

**"(3)** This Part, except sections 308, 316, 317, 320*c*, 320*e*, 320*f*, 320*g* and 320*j*, does not apply to group accident insurance or group sickness insurance.

**"The Contract of Insurance**

**"308.** A contract shall be evidenced by an instrument in writing called, in this Part, a policy.

Section 309. This section is the same as present section 310 [286], except that references to the address, occupation and business of the insured have been omitted as being unnecessary. This type of information frequently becomes obsolete after the policy has been issued.

Present section 311 [287] is omitted because it simply permits one of several possible methods of renewing a contract.

Section 310. This new section requires that exceptions and reductions be clearly brought to the notice of the insured.

In regard to subsection (4) fraternal contracts are presently exempted entirely from the Accident and Sickness Insurance Part by section 306 (1) [282 (1)]. This exemption is now repealed and the Part applies to fraternal insurance except that it has been necessary to make special provision for these contracts in this section and in sections 312 and 314. These special provisions are similar to the special provisions relating to fraternal insurance in the Life Part.

Section 311. This replaces present section 312 [288] dealing with statutory conditions.

Statutory Condition 1. Paragraph (1) is similar to present Statutory Condition 1 except that the cross-reference to Statutory Condition 3 has been deleted as unnecessary. Paragraph (2) is the same as present Statutory Condition 20.

Statutory Condition 2. This is similar to present Statutory Condition 2 except that the first part of that condition has been transferred to section 320f, post.

Statutory Condition 3. This condition is similar in purpose to present Statutory Conditions 3 and 4 but the wording has been simplified and the reference to premium rates, etc., filed with the Superintendent of Insurance has been dropped because such filing is not required.

**“309.** The policy shall contain the name and address of the insurer, the name of the insured, the name of the person to whom the insurance money is payable, the premium for the insurance, the indemnity for which the insurer may become liable, the event on the happening of which such liability is to accrue and the term of the insurance.

**“310.** (1) Subject to subsections (2), (3) and (4) of this section, to the statutory conditions referred to in section 311 and to section 320*d*, the insurer shall set forth in the policy every exception or reduction affecting the amount payable under the contract, either in the provision affected by the exception or reduction or under a heading such as “Exceptions” or “Reductions”.

“(2) Where the exception or reduction affects only one provision in the policy it shall be set forth in that provision.

“(3) Where the exception or reduction is contained in an endorsement, insertion or rider, the endorsement, insertion or rider shall, unless it affects all amounts payable under the contract, make reference to the provisions in the policy affected by the exception or reduction.

“(4) This section does not apply to a policy issued by a fraternal society.

**“311.** Subject to section 312, the conditions set forth in this section shall be deemed to be part of every contract and shall be printed on every policy with the heading “Statutory Conditions”.

#### STATUTORY CONDITIONS

1. (1) **The Contract** This policy, including the endorsements, insertions or riders, if any, and the application for the contract if attached to the policy, constitutes the entire contract and no agent has authority to change the contract or waive any of its provisions.

(2) **Waiver** The insurer shall be deemed not to have waived any condition of this contract, either in whole or in part, unless the waiver is clearly expressed in writing signed by the insurer.

2. **Material Facts** No statement made by the insured on his application for this contract may be used in defence of a claim under, or to avoid, this contract unless it is contained in the written application for the contract and unless a copy of the application, or such part thereof as is material to the contract, is endorsed upon, inserted in or attached to the policy when issued.

3. (1) **Changes in Occupation** If, after this policy is issued, the person insured engages for compensation in an occupation that is classified by the insurer as more hazardous than that stated in this policy, the liability under this contract is limited to the amount that the premium paid would have purchased for the more hazardous occupation according to the limits, classification of risks and premium rates in use by the insurer at the time the person insured engaged in the more hazardous occupation.

(2) If the person insured changes his occupation from that stated in this policy to an occupation classified by the insurer as less hazardous and so advises the insurer in writing, the insurer shall either

(a) reduce the premium rate, or

Statutory Condition 4. This condition replaces present Statutory Condition 6. It has been reworded and, in particular, specific reference is made to the types of contracts to be taken into account.

Statutory Condition 5. Present Statutory Conditions 7 and 10 have been combined and somewhat shortened without change in their effect.

Statutory Condition 6. The substance of present Statutory Conditions 8, 9 and 11 has been combined in one condition.

Statutory Condition 7. The words at the beginning of paragraph (1) include the substance of present Statutory Condition 16. The balance of the paragraph is the same as present Statutory Condition 12 except that the proviso to present clause (a) now appears as new paragraph (2) and is applicable to both notice of claim and proof of claim. A one-year limitation on late filings has been added.

- (b) issue a policy for the unexpired term of this contract at the lower rate of premium applicable to the less hazardous occupation,

according to the limits, classification of risks and premium rates used by the insurer at the date of receipt of advice of the change in occupation, and shall refund to the insured the amount by which the unearned premium on this contract exceeds the premium at the lower rate for the unexpired term.

**4. Relation of Earnings to Insurance** Where the benefits for loss of time payable hereunder, either alone or together with benefits for loss of time under another contract, including a contract of group accident insurance or group sickness insurance or of both and a life insurance contract providing disability insurance, exceed the money value of the time of the person insured, the insurer is liable only for that proportion of the benefits for loss of time stated in this policy that the money value of the time of the person insured bears to the aggregate of the benefits for loss of time payable under all such contracts and the excess premium, if any, paid by the insured shall be returned to him by the insurer.

**5. Termination by Insured** The insured may terminate the contract at any time by giving written notice of termination to the insurer by registered mail to its head office or chief agency in the Province or by delivery thereof to an authorized agent of the insurer in the Province and the insurer shall, upon surrender of this policy, refund the amount of premium paid in excess of the short rate premium for the expired time according to the table in use by the insurer at the time of termination.

**6. (1) Termination by Insurer** The insurer may determine the contract at any time by giving written notice of termination to the insured and by refunding concurrently with the giving of notice the amount of premium paid in excess of the pro rata premium for the expired time.

(2) The notice of termination may be delivered to the insured, or it may be sent by registered mail to the latest address of the insured on the records of the insurer.

(3) Where the notice of termination is delivered to the insured, five days' notice of termination shall be given; where it is mailed to the insured, ten days' notice of termination shall be given and the ten days shall begin on the day following the arrival of the notice at the post office to which it is addressed.

**7. (1) Notice and Proof of Claim** The insured or his agent, or a beneficiary entitled to make a claim or his agent, shall

- (a) give written notice of claim to the insurer
  - (i) by delivery thereof, or by sending it by registered mail, to the head office or chief agency of the insurer in the province, or
  - (ii) by delivery thereof to an authorized agent of the insurer in the province,
 not later than thirty days from the date of the accident or the beginning of the disability due to sickness,
- (b) within ninety days from the date of the accident or the beginning of the disability due to sickness for which the claim is made, furnish to the insurer such proof of claim as is reasonably possible in the circumstances of the happening of the accident or sickness and the loss occasioned thereby, and
- (c) if so required by the insurer, furnish a certificate as to the cause and nature of the accident or sickness for which the

Statutory Condition 8. This condition is similar in purpose to present Statutory Condition 13 but the wording has been simplified.

Statutory Condition 9. This condition is the same as present Statutory Condition 14. Present Statutory Condition 15 has been deleted as unnecessary.

Statutory Condition 10. This condition is the same as present Statutory Condition 17 except that the expression "other than benefits for loss of time" has been used for uniformity with other statutory conditions.

Statutory Condition 11. This condition is similar in purpose to present Statutory Condition 18 but the wording has been simplified.

Statutory Condition 12. This condition is the same as present Statutory Condition 21 except that the limitation period is stated in the negative.

Section 312. This section replaces present section 313 [289], 314 [290], 315 [291] and 318 [293] and provides a greater degree of flexibility in the use of statutory conditions.

Subsection (1) is designed to permit, for instance, the omission of Statutory Condition 11 in a hospital expense policy that does not provide loss of time benefits.

Subsection (2) would permit simplifying a policy by the omission of the conditions referred to therein in cases where the insurer is prepared to waive the subject matter of these conditions.

Subsection (3) permits the omission of all reference to termination of the contract where the insurer does not wish to include the right to terminate.

Subsection (4) permits flexibility in the named conditions where the insured and beneficiary are not thereby prejudiced.

claim is made and as to the duration of the disability caused thereby, from a medical practitioner legally qualified to practice in the province.

- (2) **Failure to Give Notice or Proof** Failure to give notice of claim or furnish proof of claim within the time prescribed in this statutory condition will not invalidate the claim if the notice or proof is given or furnished as soon as reasonably possible and in no event later than one year from the date of the accident or the beginning of the disability due to sickness and if it is shown that it was not reasonably possible to give notice or furnish proof within the time so prescribed.
8. **Insurer to Furnish Forms for Proof of Claim** The insurer shall furnish forms for proof of claim within fifteen days after receiving notice of claim but where the claimant has not received the forms within that time he may submit his proof of claim in the form of a written statement of the happening and character of the accident or sickness giving rise to the claim and of the extent of the loss.
9. **Right of Examination** The insurer has the right, and the claimant shall afford to the insurer an opportunity, to examine the person of the person insured when and as often as it may reasonably require while the claim hereunder is pending, and also, in the case of the death of the person insured to make an autopsy subject to any law of the province relating to autopsies.
10. **When Moneys Payable Other than for Loss of Time** All moneys payable under this contract other than benefits for loss of time shall be paid by the insurer within sixty days after it has received proof of claim.
11. **When Loss of Time Benefits Payable** The initial benefits for loss of time shall be paid by the insurer within thirty days after it has received proof of claim, and payments shall be made thereafter within each succeeding sixty-day period while the insurer remains liable for the payments if the insured, whenever required to do so, furnishes prior to payment proof of continuing disability.
12. **Limitation of Actions** An action or proceeding against the insurer for the recovery of a claim under this contract shall not be begun after one year from the date on which the cause of action arose.

**“312.** (1) Where a statutory condition is not applicable to the benefits provided by the contract it may be omitted from the policy or varied so that it will be applicable.

“(2) Statutory Conditions 3, 4 and 9 may be omitted from the policy if the contract does not contain any provisions respecting the matters dealt with therein.

“(3) Statutory Conditions 5 and 6 may be omitted from the policy if the contract does not provide that it may be terminated by the insurer.

“(4) Statutory Conditions 3, 4, 5, 6 and 9, and Statutory Condition 7 except, in policies providing benefits for loss of time, clauses (a) and (b) of paragraph (1) thereof, may be varied but if by reason of the variation the contract is less favourable to the insured, person insured or

Subsection (5) permits a degree of leeway, again in favour of the insured and beneficiary, in the time periods prescribed in Statutory Conditions 10, 11 and 12.

Subsection (6) requires that titles of statutory conditions be printed in the policy but permits the omission of the numbers of the conditions in order to avoid confusion where some of the conditions have been omitted pursuant to this section.

Subsection (7) contains special adaptations for fraternal insurance. Other changes relating to fraternal are in sections 310 and 314.

Section 313. This is the same as present section 316 [292] with the addition of a reference to section 446 [421].

Section 314. This section is a revision of present sections 308 [284] and 309 [285]. Three minor changes have been made:

1. Section 309 (1) [285 (1)] has been rearranged.
2. In section 309 (1) [285 (2)] the words "or a part thereof" have been added after the word "premium" in the first line and the words "is not paid" added after the words "promissory note" in the third line.
3. Subsection (4) has been added.

beneficiary than it would be if the condition had not been varied, the condition shall be deemed to be included in the policy in the form in which it appears in section 311.

“(5) Statutory Conditions 10 and 11 may be varied by shortening the periods of time prescribed therein and Statutory Condition 12 may be varied by lengthening the period of time prescribed therein.

“(6) The title of a statutory condition shall be reproduced in the policy along with the statutory condition but the number of a statutory condition may be omitted.

“(7) In the case of a contract made by a fraternal society

“(a) the following provision shall be printed on every policy in substitution for paragraph (1) of Statutory Condition 1 in section 311:

“**1.** (1) This policy, the Act or instrument of incorporation of the insurer, its constitution, by-laws and rules, and the amendments made from time to time to its constitution, by-laws or rules, the application for the contract and the medical statement of the applicant constitute the entire contract and no agent has authority to change the contract or waive any of its provisions.”

“(b) Statutory Condition 5 in section 311 shall not be printed on the policy.

“**313.** Where a policy of accident insurance is issued through the agency of a transportation corporation that holds a licence issued under sections 446 and 448, the statutory conditions set out in section 311 need not be printed on the policy if the policy contains the following notice printed in conspicuous type:

“Notwithstanding any other provision herein contained this contract is subject to the statutory conditions respecting contracts of accident insurance.”

“**314.** (1) Where a policy is delivered the contract is as binding on the insurer as if the premium had been paid, although it has not in fact been paid, and although delivered by an officer or agent of the insurer who did not have authority to deliver it.

“(2) The insurer may deduct the unpaid premium from the amount for which it may become liable under the contract or may sue the insured therefor.

“(3) Where the premium or a part thereof is paid by a cheque or a promissory note and the cheque is not paid on presentation or the promissory note is not paid at maturity the contract is voidable at the option of the insurer.

“(4) This section does not apply to a contract made by a fraternal society.

Section 315. This section and sections 316 to 319 are adaptations of sections 237 [218] to 241 [222] of the Life Part now applicable to accident and sickness insurance by cross-reference. No changes have been made except

(1) The expression "life and well-being" is used instead of "life", and

(2) A new subsection (2) has been added to section 317.

Section 316. See note to section 315.

Section 317. New subsection (2) has been added to make it clear that a group contract is not void for lack of insurable interest if the contract provides benefits solely for the persons insured in the group.

Section 318. See note to section 315.

Section 319. See note to section 315.

**"Insurable Interest**

**"315.** Every person has an insurable interest in his own life and well-being.

**"316.** Without restricting the meaning that "insurable interest" now has in law, each of the following persons has an insurable interest:

- "(a)** a parent in the life and well-being of his child under twenty-five years of age;
- "(b)** a husband in the life and well-being of his wife;
- "(c)** a wife in the life and well-being of her husband;
- "(d)** one person in the life and well-being of another upon whom he is wholly or in part dependent for support or education, or from whom he is receiving support or education;
- "(e)** a corporation or other person in the life and well-being of its or his officer or employee;
- "(f)** a person who has a pecuniary interest in the duration of the life and continued well-being of another person, in the life and well-being of that person.

**"317.** (1) A contract is void, if, at the time at which it would otherwise take effect and be binding, the insured has no insurable interest in the person insured.

**"(2)** Notwithstanding subsection (1), a contract of group accident insurance or of group sickness insurance or of both is valid if it provides benefits solely for the persons insured under the contract.

**"318.** Where the insured has at the time at which the contract takes effect an insurable interest in the person insured, it is not necessary for the validity of the contract or an assignment thereof that a beneficiary, or a person claiming under an assignment, or by will or by succession, have an insurable interest.

**"Policies on the Lives of Minors**

**"319.** A minor, after attaining the age of fifteen years, has the capacity of a person of full age,

- "(a)** to effect a contract on his own life or well-being and to deal with the contract,
- "(b)** to deal with a contract on his own life or well-being effected by him before attaining the age of fifteen years,
- "(c)** to deal with his interest in a contract effected on his life or well-being by another, whether effected before or after the minor attained the age of fifteen years, and
- "(d)** if married, to effect a contract on the life or well-being of his spouse or of his children, or of both, and to deal with the contract.

Section 320. This section is similar to the first part of present Statutory Condition 2.

Section 320a. New subsection (1) makes innocent misstatements, except those relating to age, incontestable after the policy has been in force two years.

Subsection (2) is necessary to except from the operation of subsection (1) those cases where a claim made after the expiry of the contestable period actually arose from a loss incurred or a disability beginning within that period.

Section 320b. This new section provides that pre-existing conditions will not affect a claim unless specifically excluded from the policy

(a) if the loss occurs after a period of two years' cover, or

(b) at any time if the pre-existing condition was disclosed by the insured on his application.

Section 320c. This new section provides for the appointment of beneficiaries of an accidental death benefit and for a direct right of action by such a beneficiary against the insurer.

**"Misrepresentation and Non-disclosure**

**"320.** The statements made by the insured in his application for the contract are, in the absence of fraud, representations and not warranties.

**"320a.** (1) Except as provided in subsection (2), after a contract, including renewals thereof, has been in force for two years with respect to a person insured, every statement made in the written application in respect of that person, other than a fraudulent statement or a statement erroneous as to age, shall be deemed to be true and is incontestable.

"(2) Where a claim arises from a loss incurred or a disability beginning before a contract, including renewals thereof, has been in force for two years with respect to the person in respect of whom the claim is made, subsection (1) does not apply to that claim.

**"320b.** Where a person insured suffers or has suffered from a disease or physical condition that existed prior to the date the contract came into force with respect to that person and the disease or physical condition is not specifically excluded from the insurance,

"(a) the prior existence of the disease or physical condition is not, except in the case of fraud, available as a defence against liability, in whole or in part for a loss incurred or a disability beginning after the contract, including renewals thereof, has been in force for two years with respect to that person, and

"(b) the existence of the disease or physical condition is not, except in the case of fraud, available as a defence against liability, in whole or in part, if the disease or physical condition was disclosed in the written application for the contract.

**"Beneficiaries**

**"320c.** (1) Where insurance money is payable upon death by accident, the insured, or in the case of group accident insurance, the person insured, may designate in writing a beneficiary to receive the insurance money or part thereof and may alter or revoke in writing any prior designation.

"(2) If the beneficiary is not living at the time of the death of the person insured, the insurance money is payable to the insured or his estate or in the case of group accident insurance the estate of the person insured, unless the instrument by which the beneficiary is designated otherwise provides.

"(3) A beneficiary designated pursuant to subsection (1) may upon the death of the person insured enforce for his own benefit the payment of insurance money payable to him and payment to the beneficiary discharges the insurer, but the insurer may set up any defence that it could

Section 320*d*. This new section lays down rules appropriate to accident and sickness insurance respecting misstatements of age.

Section 320*e*. This section is an adaptation of present section 269 [248] of the Life Part now applicable to accident and sickness insurance by cross-reference.

Section 320*f*. This section is an adaptation of section 274 (1) and (3) [253 (1) and (3)] and section 276 [255] of the Life Part.

Section 320*g*. This new section is parallel to section 223 (3) [206 (2)] of the Life Part. The section will enable insurers to pay numerous small amounts to widows and others where the estate of the deceased is too small to warrant the cost of taking out letters of administration or probate.

Section 320*h*. This new section prevents the giving of undue prominence to the benefit provisions of a policy as compared to its restrictions.

have set up against the insured, or the person insured in the case of group accident insurance, or the personal representative of either of them.

**"Miscellaneous**

**"320d.** (1) Subject to subsection (2), if the age of the person insured has been misstated the amounts payable under the contract are those that the premium paid would have purchased if the correct age had been stated.

"(2) Where the age of the person insured affects the commencement or termination of the insurance, the true age governs.

**"320e.** Where a contract provides for the payment of moneys upon the death by accident of the person insured and the person insured and a beneficiary perish in the same disaster, it shall be *prima facie* presumed that the beneficiary died first.

**"320f.** (1) Where the insurer admits liability for the insurance money or any part thereof, and it appears to the insurer that

"(a) there are adverse claimants,

"(b) the place of abode of a person entitled is unknown,  
or

"(c) there is no person capable of giving and authorized to give a valid discharge, who is willing to do so,

the insurer may apply *ex parte* to the court for an order for payment of the money into court, and the court may upon such notice, if any, as it thinks necessary make an order accordingly.

"(2) The court may fix and ascertain without taxation the costs incurred upon or in connection with any application or order made under subsection (1) and may order the costs to be paid out of the insurance money or by the insurer or otherwise as seems just.

"(3) A payment made pursuant to an order under subsection (1) discharges the insurer to the extent of the payment.

**"320g.** Where insurance money is payable to a beneficiary or to the estate of the insured or of the person insured, the insurer may, if the contract so provides, pay an amount not exceeding two thousand dollars to

"(a) a relative by blood or connection by marriage of the insured or of the person insured, or

"(b) any person appearing to the insurer to be equitably entitled thereto by reason of having incurred expense for the maintenance, medical attendance or burial of the insured or person insured or to have a claim against the estate of the insured or of the person insured in relation thereto.

**"320h.** The insurer shall not, in the policy, give undue prominence to any provision or statutory condition as compared to other provisions or statutory conditions, unless the

Section 320*i*. This section is the same as present section 320 [295] except that the words "after the maturity of the contract" have been changed to "with respect to the loss insured against". Also, a reference is added to the court before which a question is tried.

Section 320*j*. This section is parallel to section 236 [217] of the Life Part, now applicable by cross-reference.

**36.** Section 398 [373]. See note after clause 4 of this Bill.

**37.** This is identical with present section 317 [292*a*] which is removed from Part VIII, Accident and Sickness Insurance, and placed in Part XVI, Agents, Brokers and Adjusters.

effect of that provision or statutory condition is to increase the premium or decrease the benefits otherwise provided for in the policy.

**“320i.** Where there has been imperfect compliance with a statutory condition as to the proof of loss to be given by the claimant or as to any matter or thing to be done or omitted by the insured or claimant with respect to the loss insured against, and a consequent forfeiture or avoidance of the insurance in whole or in part, and a court before which a question relating thereto is tried deems it inequitable that the insurance should be forfeited or avoided on that ground, the court may relieve against the forfeiture or avoidance on such terms as it deems just.

**“320j.** No officer, agent, employee, or servant of the insurer or any person soliciting accident insurance or sickness insurance or both, whether an agent of the insurer or not, shall, to the prejudice of the insured or of the person insured, be deemed to be for any purpose whatever the agent of the insured or of the person insured in respect of any question arising out of the contract.”.

**36.** Section 398 is struck out and the following is substituted:

**“398.** No fraternal society other than a Canadian registered company shall undertake insurance unless

**“(a)** it was licensed in Alberta prior to the thirtieth day of June, 1951, and

**“(b)** its contracts for life insurance require members to pay premiums or assessments on every one thousand dollar liability equal to those set out in Schedule H, and in addition such further sum as the Superintendent considers sufficient to cover the expenses of management, or its actuary certifies that the said premiums or assessments are actuarially sufficient.”.

**37.** The following new section is added immediately after section 446:

**“446a.** (1) In this section “machine” means a vending machine whereby on depositing therein the premium payable 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.

**“(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

**38.** Section 451 [426]. The present wording of the Act is vague about single company representation for life agents, and does not contain authority for the placing of business with other life insurers when consent has been obtained. This amendment is intended to rectify this deficiency and to recognize established practices both in Alberta and other provinces. New subsection (4) will provide the Superintendent of Insurance with adequate records and information regarding an agent and will ensure that the Superintendent has on file at all times a sponsoring insurer for each licensed agent.

**39.** These statutory conditions have been rewritten and are transferred into Part V, Fire Insurance, section 210 [195].

**40.** Schedule D. This is a uniform amendment adopted at the 1956 Conference of Superintendents of Insurance rewording the section for clarification and allowing for the policy to provide otherwise.

**41.** These statutory conditions have been rewritten and are transferred into Part VIII, Accident and Sickness Insurance, section 311 [287].

**42.** This will relate the new sections of the Accident and Sickness Part to existing insurance contracts.

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.

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

**38.** Section 451 is amended by adding immediately after subsection (2) the following subsections:

“(3) No life insurance agent shall be licensed to act as agent for more than one insurer transacting life insurance, and the name of such insurer shall be specified in the licence, and no such agent shall represent himself to the public by advertisement or otherwise as the agent of more than one such insurer; but where such an agent is unable to negotiate insurance on behalf of an applicant for insurance with the insurer for which he is the authorized agent, the agent may procure the insurance from another insurer if the other insurer obtains in each case the consent in writing of the insurer for which the agent is the authorized agent, and files a copy of the consent with the Superintendent.

“(4) Where an insurance agency other than a life insurance agency is terminated the insurer sponsoring that agent’s application shall forthwith give notice in writing to the Superintendent of the termination and the reasons therefor.”.

**39.** Schedule B is repealed.

**40.** Schedule D is amended by striking out Statutory Condition 4 and by substituting the following:

“4. Unless otherwise provided in this policy, in respect of the indemnity provided therein against liability for loss or damage to persons or property,

“(a) an automobile covered by the policy shall not be used for towing a trailer owned by the insured unless like indemnity is also provided by the insurer in respect of the trailer, and

“(b) a trailer covered by the policy shall not be towed by an automobile owned by the insured unless like indemnity is also provided by the insurer in respect of the automobile.”.

**41.** Schedule E is repealed.

**42.** Sections 320a to 320f as enacted by section 35 of this Act apply to contracts in effect on the day upon which section 35 comes into force.

**43.** (1) The clauses here mentioned are to come into force with the Revised Statutes of Alberta, 1955.

(2) These clauses make the changes recommended by the Superintendents of Insurance Conference for uniform enactment in the provinces of Canada. Several provinces have already enacted them, but all will be effective on the same date fixed in each province by proclamation.

**43.** (1) Sections 1, 2, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 22, 29, 34, 36 and 38 come into force on the day upon which the Revised Statutes of Alberta, 1955, come into force.

(2) Sections 3, 11, 12, 13, 14, 18, 19, 20, 21, 23, 24, 25, 26, 27, 28, 30, 31, 32, 35, 37, 39, 40, 41 and 42 come into force upon a date to be fixed by Proclamation of the Lieutenant Governor in Council.

(3) Section 33 comes into force on the first day of July, 1958.

THIRD SESSION  
THIRTEENTH LEGISLATURE  
5 ELIZABETH II  
1957

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**BILL**

An Act to amend The Alberta  
Insurance Act.

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Received and read the

First time.....

Second time.....

Third time.....

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HON. MR. HOOKE

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