

1967 Bill 16

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Fifth Session, 15th Legislature, 15 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

**BILL 16**

**An Act to amend The Alberta Insurance Act**

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THE PROVINCIAL SECRETARY

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First Reading .....

Second Reading .....

Third Reading .....

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# BILL 16

1967

An Act to amend The Alberta Insurance Act

(Assented to \_\_\_\_\_, 1967)

**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* is hereby amended.

2. Section 2 is amended

(a) by striking out clauses 5 and 6 and by substituting the following:

5. "automobile" includes a trolley bus and a self-propelled vehicle, and the trailers, accessories and equipment of automobiles, but does not include railway rolling stock that runs on rails, watercraft or aircraft;

6. "automobile insurance" means insurance,

(i) against liability arising out of,

(A) bodily injury to or the death of a person,

or

(B) loss of or damage to property,

caused by an automobile or the use or operation thereof, or

(ii) against loss of or damage to an automobile and the loss of use thereof,

and includes insurance otherwise coming within the class of accident insurance where the accident is caused by an automobile or the use or operation thereof, whether liability exists or not, if the contract also includes insurance described in subclause (i);

(b) by adding the following clause after clause 42:

42a. "motor vehicle liability policy" means a policy or part of a policy evidencing a contract insuring,

(i) the owner or driver of an automobile, or

(ii) a person who is not the owner or driver thereof where the automobile is being used or operated by his employee or agent or any other person on his behalf,

## Explanatory Note

1. This Bill amends chapter 159 of the Revised Statutes.

2. 5. This combines clause 5 of section 2 and section 278(a) of the Act to avoid unnecessary duplication. The definition is required in section 2 as there are references in the Act prior to the sections of the specific Part. The only change, in effect, is the reference to trolley bus.

6. Here again the definition in section 2 replaces two definitions presently in the Act. Subclauses (i) and (ii) except for loss of use in (ii) reproduce the present definitions in clause 6 of section 2 and in section 278(b) of the Act.

42a. This definition corresponds to section 278(e) of the Act. This has been placed in section 2 rather than in the Automobile Insurance Part because in earlier sections of the Act reference is made to the phrase.

against liability arising out of bodily injury to or the death of a person or loss or damage to property caused by an automobile or the use or operation thereof;

(c) by adding the following clause after clause 45:

45a. "non-owner's policy" means a motor vehicle liability policy insuring a person solely in respect of the use or operation by him or on his behalf of an automobile that is not owned by him;

(d) by adding the following clause after clause 46:

46a. "owner's policy" means a motor vehicle liability policy insuring a person in respect of the ownership, use or operation of an automobile owned by him and within the description or definition thereof in the policy and, if the contract so provides, in respect of the use or operation of any other automobile;

**3.** Section 32 is repealed.

**4.** Section 33 is amended by striking out subsection (4) and by substituting the following:

(4) A licence to carry on automobile insurance in Alberta is subject to the following conditions:

(a) In any action in Alberta against the licensed insurer or its insured arising out of an automobile accident in Alberta, the insurer shall appear and shall not set up any defence to a claim under a contract made outside Alberta, including any defence as to the limit or limits of liability under the contract, that might not be set up if the contract were evidenced by a motor vehicle liability policy issued in Alberta;

(b) In any action in another province or territory of Canada against the licensed insurer, or its insured, arising out of an automobile accident in that province or territory, the insurer shall appear and shall not set up any defence to a claim under a contract evidenced by a motor vehicle liability policy issued in Alberta, including any defence as to the limit or limits of liability under the contract, that might not be set up if the contract were evidenced by a motor vehicle liability policy issued in the other province or territory.

**5.** Section 187, subsection (2b) is amended by striking out the words "automobile insurance".

**6.** The following sections are added after section 187:

**187a.** (1) This section applies to a contract, other than a contract of hail insurance, containing a condition, statutory or otherwise, providing for an appraisal to determine specified matters in the event of a disagreement between the insured and the insurer.

45a. This definition corresponds to section 278(c) of the Act. It has, however, been expanded to include all types of non-ownership coverage.

46a. This definition corresponds to section 278(f) of the Act.

3. The subject matter of section 32 is now covered in the definition of automobile insurance added to section 2.

4. Corresponds to section 33 (4) of the present Act.

5. The amendment made here makes section 187 (2a) applicable to automobile insurance.

6. Section 187a incorporates the procedure for appraisal in the substantive law, making it generally applicable rather than having this procedure set out in full in the statutory or policy conditions.

(2) The insured and the insurer shall each appoint an appraiser, and the two appraisers so appointed shall appoint an umpire.

(3) The appraisers shall determine the matters in disagreement and, if they fail to agree, they shall submit their differences to the umpire, and the finding in writing of any two determines the matters.

(4) Each party to the appraisal shall pay the appraiser appointed by him and shall bear equally the expense of the appraisal and the umpire.

(5) Where,

(a) a party fails to appoint an appraiser within seven clear days after being served with written notice to do so,

(b) the appraisers fail to agree upon an umpire within 15 days after their appointment, or

(c) an appraiser or umpire refuses to act or is incapable of acting or dies,

a judge of the district court of the district in which the appraisal is to be made may appoint an appraiser or umpire, as the case may be, upon the application of the insured or of the insurer.

**187b.** Where there has been imperfect compliance with a statutory condition as to the proof of loss to be given by the insured or other matter or thing required to be done or omitted by the insured with respect to the loss and a consequent forfeiture or avoidance of the insurance in whole or in part and the court considers 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 considers just.

**187c.** Insurance money is payable in Alberta in lawful money of Canada.

**187d.** (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 stated in writing and signed by a person authorized for that purpose by the insurer.

(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.

**7.** Sections 210*a*, 215 and 217*a* are repealed.

Section 187b is of general application and will supplant present section 287 which has not been included in the revision of Part VII.

Section 187c replaces present section 288 and is of general application.

Section 187d will replace sections 217a and 289 and Automobile Statutory Condition 8 and will be of general application.

**7.** These sections in the Fire Insurance Part are repealed as sections 187a and 187d of the Bill will be of general application and the repealed sections would only be duplicates.

8. Subject to section 9, Part VII is repealed and the following Part is substituted:

## PART VII

### AUTOMOBILE INSURANCE

**278.** In this Part,

- (a) "contract" means a contract of automobile insurance;
- (b) "insured" means a person insured by a contract whether named or not.

**279.** (1) This Part applies to contracts providing automobile insurance made or renewed in Alberta on or after the coming into force of this Part.

(2) This Part does not apply to contracts insuring only against,

- (a) loss of or damage to an automobile while in or on described premises,
- (b) loss of or damage to property carried in or upon an automobile, or
- (c) liability for loss of or damage to property carried in or upon an automobile.

(3) This Part does not apply to a contract providing insurance in respect of an automobile not required to be registered under *The Highway Traffic Act* unless it is insured under a contract evidenced by a form of policy approved under this Part.

(4) This Part does not apply to a contract insuring solely the interest of a person who has a lien upon, or has as security legal title to, an automobile and who does not have possession of the automobile.

### Approval of Forms

**280.** (1) No insurer shall use a form of application, policy, endorsement or renewal or continuation certificate in respect of automobile insurance other than a form approved by the Superintendent.

(2) An insurer may require additional information in an approved application form, but such additional information does not constitute part of the application for the purposes of section 283.

(3) Where, in the opinion of the Superintendent, any provision of this Part, including any statutory condition, is wholly or partly inappropriate to the requirements of a contract or is inapplicable by reason of the requirements of any Act, he may approve a form of policy, or part thereof, or endorsement evidencing a contract sufficient or appropriate to insure the risks required or proposed to be insured, and the contract evidenced by the policy or endorse-



**3.** This repeals the sections of the Automobile Insurance Part of the Act. Later reference to section numbers is to the section numbers of the substituted Part.

Section 278. Clauses (a) and (b) of this section are the same as clauses (c) and (e) of section 278 of the Act. The definitions in clauses (a), (b), (d), (f) and (g) of section 278 have been transferred to section 2.

Section 279. This corresponds to section 279 of the Act. There have been some relatively minor changes in the application of the Part. However, subsection (4) is new and is designed to exclude from the Part single interest policies where no public interest is concerned.

Section 280 (1). This corresponds to section 285 (1) of the Act but it has been extended to embody the substance of section 280 (3), (4) and (5) of the Act, i.e. to leave the matter of the contents of applications to approval.

(2) This corresponds to section 280 (3) (e) and section 280 (4) (k) of the Act. The proviso is new and will prevent reliance by the insurer upon additional questions asked.

(3) This corresponds to section 301 of the Act.

ment in the form so approved is effective and binding according to its terms notwithstanding that those terms are inconsistent with, vary, omit or add to any provision or condition of this Part.

(4) Except as to matters mentioned in section 292, the Superintendent may, if he considers it to be in the public interest, approve a form of motor vehicle liability policy or endorsement thereto that extends the insurance beyond that prescribed in this Part.

(5) The Superintendent, in granting an approval under subsection (4), may require the insurer to charge an additional premium for the extension and to state that fact in the policy or in any endorsement.

(6) The Superintendent may revoke an approval given under this section, and, upon notification of the revocation in writing, no insurer shall thereafter use or deliver a form that contravenes the notification.

(7) The Superintendent shall, on request of any interested insurer, specify in writing his reasons for granting, refusing or revoking an approval of a form.

(8) An insurer that issues or delivers an owner's policy in Alberta, or any renewal thereof, or any evidence of the continuation of the policy, shall issue to the insured a card evidencing the insurance, and the card shall be in a form approved by the Superintendent.

#### **Application and Policy**

**281.** No person carrying on the business of financing the sale or purchase of automobiles and no automobile dealer, insurance agent or broker and no officer or employee of such a person, dealer, agent or broker shall act as the agent of an applicant for the purpose of signing an application for automobile insurance.

**282.** (1) A copy of the written application, signed by the insured or his agent, or, if no signed application is made, a copy of the purported application, or a copy of such part of the application or purported application as is material to the contract, shall be embodied in, endorsed upon or attached to the policy when issued by the insurer.

(2) If no signed written application is received by the insurer prior to the issue of the policy, the insurer shall deliver or mail to the insured named in the policy, or to the agent for delivery or mailing to the insured, a form of application to be completed and signed by the insured and returned to the insurer.

(3) The insurer shall deliver or mail to the insured named in the policy, or to the agent for delivery or mailing to the insured, the policy or a true copy thereof and every endorsement or other amendment to the contract.

(4) This corresponds to section 298 (4) of the Act.

(5) This corresponds to section 298 (5) of the Act.

(6) This is new

(7) This corresponds to section 285 (2) of the Act.

(8) This is new.

Section 281. This corresponds to section 280 (2) of the Act.

Section 282 (1). This corresponds to section 280 (8) of the Act although the reference to purported application is new.

(2) This is new.

(3) This corresponds to section 282 (3).

(4) Where a written application signed by the insured or his agent is made for a contract, the policy evidencing the contract shall be deemed to be in accordance with the application unless the insurer points out in writing to the insured named in the policy in what respect the policy differs from the application, and, in that event, the insured shall be deemed to have accepted the policy unless within one week from the receipt of the notification he informs the insurer in writing that he rejects the policy.

(5) Upon every application form and policy, there shall be printed or stamped in conspicuous type a copy of subsection (1) of section 283.

**283.** (1) Where,

- (a) an applicant for a contract,
  - (i) gives false particulars of the described automobile to be insured to the prejudice of the insurer, or
  - (ii) knowingly misrepresents or fails to disclose in the application any fact required to be stated therein,
- or
- (b) the insured contravenes a term of the contract or commits a fraud, or
- (c) the insured wilfully makes a false statement in respect of a claim under the contract,

a claim by the insured is invalid and the right of the insured to recover indemnity is forfeited.

(2) No statement of the applicant shall be used in defence of a claim under the contract unless it is contained in the signed written application therefor or, where no signed written application is made, in the purported application, or part thereof, that is embodied in, endorsed upon or attached to the policy.

(3) No statement contained in a purported copy of the application, or part thereof, other than a statement describing the risk and the extent of the insurance, shall be used in defence of a claim under the contract unless the insurer proves that the applicant made the statement attributed to him in the purported application, or part thereof.

**284.** (1) Subject to subsection (3) of section 280, section 285 and section 305,

- (a) the conditions set forth in this section are statutory conditions and shall be deemed to be part of every contract and shall be printed in every policy with the heading "Statutory Conditions", and
- (b) no variation or omission of or addition to a statutory condition is binding on the insured.

(2) In this section "policy" does not include an interim receipt or binder.

(4) This corresponds to the second part of section 282 (2).

(5) This corresponds to section 280 (6) of the Act.

Section 283 (1). This corresponds to section 286 (1) of the Act.

(2) This corresponds to section 286 (2) of the Act but contains a reference to questions and answers from a purported application.

(3) This provision is new and puts the onus on the insurer where no written application has been taken of proving that the insured in fact made the answers shown in the purported application.

Section 284. This corresponds to section 283 (1) of the Act.

### Statutory Conditions

In these statutory conditions, unless the context otherwise requires, the word "insured" means a person insured by this contract whether named or not.

**Material Change in Risk**                    **1.** (1) The insured named in this contract shall promptly notify the insurer or its local agent in writing of any change in the risk material to the contract and within his knowledge.

(2) Without restricting the generality of the foregoing, the words "change in the risk material to the contract" include:

(a) any change in the insurable interest of the insured named in this contract in the automobile by sale, assignment or otherwise, except through change of title by succession, death or proceedings under the *Bankruptcy Act* (Canada);

and in respect of insurance against loss of or damage to the automobile,

(b) any mortgage, lien or encumbrance affecting the automobile after the application for this contract;

(c) any other insurance of the same interest, whether valid or not, covering loss or damage insured by this contract or any portion thereof.

**Prohibited Use by Insured**                    **2.** (1) The insured shall not drive or operate the automobile,

(a) while under the influence of intoxicating liquor or drugs to such an extent as to be for the time being incapable of the proper control of the automobile; or

(b) unless he is for the time being either authorized by law or qualified to drive or operate the automobile; or

(c) while he is under the age of 16 years or under such other age as is prescribed by the law of the province in which he resides at the time this contract is made as being the minimum age at which a licence or permit to drive an automobile may be issued to him; or

(d) for any illicit or prohibited trade or transportation; or

(e) in any race or speed test.

**Prohibited Use by Others**                    (2) The insured shall not permit, suffer, allow or connive at the use of the automobile,

(a) by any person under the influence of intoxicating liquor or drugs to such an extent as to be for the time being incapable of the proper control of the automobile; or

(b) by any person,

(i) unless that person is for the time being either authorized by law or qualified to drive or operate the automobile; or

(ii) while that person is under the age of 16 years or under such other age as is prescribed by the law of the province in which he resides at the time this contract is made as being the minimum age at which a licence or permit to drive an automobile may be issued to him;

or

(c) for any illicit or prohibited trade or transportation; or

(d) in any race or speed test.

## STATUTORY CONDITIONS

Stat. Con. 1. This corresponds to present Statutory Condition 1.

Stat. Con. 2. This corresponds to present Statutory Condition 2.

*Note:* Present Statutory Conditions 3 and 4 have been embodied in section 294 hereof.

**Requirements  
Where Loss  
or Damage to  
Persons or  
Property**

**3.** (1) The insured shall,  
(a) promptly give to the insurer written notice, with all available particulars, of any accident involving loss or damage to persons or property and of any claim made on account of the

accident;

- (b) verify by statutory declaration, if required by the insurer, that the claim arose out of the use or operation of the automobile and that the person operating or responsible for the operation of the automobile at the time of the accident is a person insured under this contract; and  
(c) forward immediately to the insurer every letter, document, advice or writ received by him from or on behalf of the claimant.

(2) The insured shall not,

- (a) voluntarily assume any liability or settle any claim except at his own cost; or  
(b) interfere in any negotiations for settlement or in any legal proceeding.

(3) The insured shall, whenever requested by the insurer, aid in securing information and evidence and the attendance of any witness and shall co-operate with the insurer, except in a pecuniary way, in the defence of any action or proceeding or in the prosecution of any appeal.

**Requirements  
Where Loss  
or Damage to  
Automobile**

**4.** (1) Where loss of or damage to the automobile occurs, the insured shall, if the loss or damage is covered by this contract,

(a) promptly give notice thereof in writing to the insurer with the fullest

information obtainable at the time;

- (b) at the expense of the insurer, and as far as reasonably possible, protect the automobile from further loss or damage; and

(c) deliver to the insurer within 90 days after the date of the loss or damage a statutory declaration stating, to the best of his knowledge and belief, the place, time, cause and amount of the loss or damage, the interest of the insured and of all others therein, the encumbrances thereon, all other insurance, whether valid or not, covering the automobile and that the loss or damage did not occur through any wilful act or neglect, procurement, means or connivance of the insured.

(2) Any further loss or damage accruing to the automobile directly or indirectly from a failure to protect it as required under subcondition 1 of this condition is not recoverable under this contract.

(3) No repairs, other than those that are immediately necessary for the protection of the automobile from further loss or damage, shall be undertaken and no physical evidence of the loss or damage shall be removed,

(a) without the written consent of the insurer; or

(b) until the insurer has had a reasonable time to make the examination for which provision is made in statutory condition 5.



Stat. Con. 3. This corresponds to present Statutory Condition 6.

Stat. Con. 4. This corresponds to present Statutory Condition 7 except that there has been a clarification that is contained in sub-condition (7) hereof. Also the procedure for appraisal presently contained in Statutory Condition 7 is to be transferred to a general section designated as section 187a.

*Note:* Statutory Condition 8 is embodied in proposed section 187a.

**Examination of Insured** (4) The insured shall submit to examination under oath, and shall produce for examination at such reasonable place and time as is designated by the insurer or its representative all documents in his possession or control that relate to the matters in question, and he shall permit extracts and copies thereof to be made.

**Insurer Liable for Cash Value of Automobile** (5) The insurer shall not be liable for more than the actual cash value of the automobile at the time any loss or damage occurs, and the loss or damage shall be ascertained or estimated according to that actual cash value with proper deduction for depreciation, however caused, and shall not exceed the amount that it would cost to repair or replace the automobile, or any part thereof, with material of like kind and quality, but, if any part of the automobile is obsolete and out of stock, the liability of the insurer in respect thereof shall be limited to the value of that part at the time of loss or damage, not exceeding the maker's latest list price.

**Repair or Replacement** (6) Except where an appraisal has been made, the insurer, instead of making payment, may, within a reasonable time, repair, rebuild or replace the property damaged or lost with other of like kind and quality if, within seven days after the receipt of the proof of loss, it gives written notice of its intention to do so.

**No Abandonment; Salvage** (7) There shall be no abandonment of the automobile to the insurer without the insurer's consent. If the insurer exercises the option to replace the automobile or pays the actual cash value of the automobile, the salvage, if any, shall vest in the insurer.

**In Case of Disagreement** (8) In the event of disagreement as to the nature and extent of the repairs and replacements required, or as to their adequacy, if effected, or as to the amount payable in respect of any loss or damage, those questions shall be determined by appraisal as provided under *The Insurance Act* before there can be recovery under this contract, whether the right to recover on the contract is disputed or not, and independently of all other questions. There shall be no right to an appraisal until a specific demand therefor is made in writing and until after proof of loss has been delivered.

**Inspection of Automobile** 5. The insured shall permit the insurer at all reasonable times to inspect the automobile and its equipment.

**Time and Manner of Payment of Insurance Money** 6. (1) The insurer shall pay the insurance money for which it is liable under this contract within 60 days after the proof of loss has been received by it or, where an appraisal is made under subcondition 8 of statutory condition 4, within 15 days after the award is rendered by the appraisers.

**When Action May be Brought** (2) The insured shall not bring an action to recover the amount of a claim under this contract unless the requirements of statutory conditions 3 and 4 are complied with or until the amount of the loss has been ascertained as therein provided or by a judgment against the insured after trial of the issue or by agreement between the parties with the written consent of the insurer.

Stat. Con. 5. This corresponds to present Statutory Condition 9.

Stat. Con. 6. This corresponds to present Statutory Condition 10.

**Limitation of Actions** (3) Every action or proceeding against the insurer under this contract in respect of loss or damage to the automobile shall be commenced within one year next after the happening of the loss and not afterwards, and in respect of loss or damage to persons or property shall be commenced within one year next after the cause of action arose and not afterwards.

**Who May Give Notice and Proofs of Claim** 7. Notice of claim may be given and proofs of claim may be made by the agent of the insured named in this contract in case of absence or inability of the insured to give the notice or make the proof, such 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.

**Termination** 8. (1) This contract may be terminated,  
(a) by the insurer giving to the insured 15 days' notice of termination by registered mail or five days' written notice of termination personally delivered;  
(b) by the insured at any time on request.  
(2) Where this contract is terminated by the insurer,  
(a) the insurer shall refund the excess of premium actually paid by the insured over the *pro rata* premium for the expired time, but in no event shall the *pro rata* premium for the expired time be deemed to be less than any minimum retained premium specified; and  
(b) the refund shall accompany the notice unless the premium is subject to adjustment or determination as to the amount, in which case the refund shall be made as soon as practicable.  
(3) Where this contract is terminated by the insured, the insurer shall refund as soon as practicable the excess of premium actually paid by the insured over the short rate premium for the expired time, but in no event shall the short rate premium for the expired time be deemed to be less than any minimum retained premium specified.  
(4) The refund may be made by money, postal or express company money order or cheque payable at par.  
(5) The 15 days mentioned in clause (a) of subcondition 1 of this condition commences to run on the day following the receipt of the registered letter at the post office to which it is addressed.

**Notice** 9. Any written notice to the insurer may be delivered at, or sent by registered mail to, the chief agency or head office of the insurer in the province. Written notice may be given to the insured named in this contract by letter personally delivered to him or by registered mail addressed to him at his latest post office address as notified to the insurer. In this condition, the expression "registered" means registered in or outside Canada.

Stat. Con. 7. This corresponds to present Statutory Condition 11.

Stat. Con. 8. This corresponds to present Statutory Condition 12 but has been expanded to cover cases where the amount of the premium is not susceptible of determination until the insured reports.

Stat. Con. 9. This corresponds to present Statutory Condition 13.

**285.** (1) Except as otherwise provided in the contract, the statutory conditions set forth in section 284 do not apply to insurance coming within section 305, 305*b* or 305*d*.

(2) Where a contract does not insure against liability for loss or damage to persons and property, statutory condition 3 in section 284 is not a part of the policy and may be omitted from the printing of the conditions in the policy.

(3) Where a contract does not insure against loss of or damage to the automobile, statutory condition 4 in section 284 is not a part of the policy and may be omitted from the printing of the conditions in the policy.

#### **Motor Vehicle Liability Policies**

**286.** (1) Every contract evidenced by an owner's policy insures the person named therein and every other person who with his consent personally drives an automobile owned by the insured named in the contract and within the description or definition thereof in the contract against liability imposed by law upon the insured named in the contract or that other person for loss or damage,

- (a) arising from the ownership, use or operation of any such automobile, and
- (b) resulting from bodily injury to or the death of any person, and damage to property.

(2) Where the contract evidenced by an owner's policy also provides insurance against liability in respect of an automobile not owned by the insured named in the contract, an insurer may stipulate in the contract that the insurance is restricted to such persons as are specified in the contract.

(3) Where the insured named in an owner's policy dies, the following persons shall be deemed to be the insured under the policy:

- (a) The spouse of the deceased insured if residing in the same dwelling premises at the time of his death;
- (b) In respect of the described automobile, a newly-acquired automobile that was acquired by the deceased insured prior to his death and a temporary substitute automobile, all as defined by the policy,
  - (i) any person having proper temporary custody thereof until grant of probate or administration to the personal representative of the deceased insured,
  - (ii) the personal representative of the deceased insured.

**287.** Every contract evidenced by a non-owner's policy insures the person named therein and such other person, if any, as is specified in the policy against liability imposed by law upon the insured named in the contract or that other person for loss or damage,

Section 285 (1). This is new and leaves the specific conditions required for the three types of insurance covered by the sections mentioned to approval by the Superintendent. The statutory conditions generally are inappropriate for these types of insurance.

(2) This corresponds to section 284 (1) of the Act.

(3) This corresponds to section 284 (2) of the Act.

Section 286. This corresponds to section 293 of the Act when read in conjunction with sections 288 and 289 hereof.

287. This corresponds to section 294 of the Act but it is broader in that it specifically includes under the Act any non-owner's policy—not merely a driver's policy as at present.

- (a) arising from the use or operation of an automobile within the definition thereof in the policy, other than an automobile owned by him or registered in his name, and
- (b) resulting from bodily injury to or the death of any person, and damage to property.

**288.** For the purposes of this Part, a person shall not be deemed to be the owner of an automobile for the reason only that he has a lien on the automobile or has legal title to the automobile as security.

**289.** Insurance under sections 286 and 287 applies to the ownership, use or operation of the insured automobile within Canada and the United States of America and upon a vessel plying between ports of those countries.

**290.** Any person insured by but not named in a contract to which section 286 or 287 applies may recover indemnity in the same manner and to the same extent as if named therein as the insured, and for that purpose shall be deemed to be a party to the contract and to have given consideration therefor.

**291.** Every contract evidenced by a motor vehicle liability policy shall provide that, where a person insured by the contract is involved in an accident resulting from the ownership, use or operation of an automobile in respect of which insurance is provided under the contract and resulting in loss or damage to persons or property, the insurer shall,

- (a) upon receipt of notice of loss or damage caused to persons or property, make such investigations, conduct such negotiations with the claimant and effect such settlement of any resulting claims as are deemed expedient by the insurer,
- (b) defend in the name and on behalf of the insured and at the cost of the insurer any civil action that is at any time brought against the insured on account of loss or damage to persons or property,
- (c) pay all costs taxed against the insured in any civil action defended by the insurer and any interest accruing after entry of judgment upon that part of the judgment that is within the limits of the insurer's liability, and
- (d) where the injury is to a person, reimburse the insured for outlay for such medical aid as is immediately necessary at the time.

**292.** The insurer is not liable under a contract evidenced by a motor vehicle liability policy for any liability,

- (a) imposed by any workmen's compensation law upon any person insured by the contract, or



Section 288. This is new. Its purpose is to cover cases where the lien or title holder has not possession.

Section 289. This corresponds to section 293 of the Act in its reference to territorial limits.

Section 290. This corresponds to section 293 (3) of the Act but it is broader in its application in that it includes all third parties mentioned in the insuring agreement.

Section 291. This corresponds to section 295 (1) of the Act but it is not restricted merely to an owner's and driver's policy.

Section 292. This corresponds to clauses (a), (b) and (f) of section 296 of the Act. However, the class of excluded persons is somewhat less restrictive than under section 296 (b) of the Act.

- (b) resulting from bodily injury to or the death of,
  - (i) the daughter, son, wife or husband of any person insured by the contract while being carried in or upon or entering or getting on to or alighting from the automobile, or
  - (ii) any person insured by the contract,or
- (c) resulting from bodily injury to or the death of any employee of any person insured by the contract while engaged in the operation or repair of the automobile.

**293.** The insurer may provide under a contract evidenced by a motor vehicle liability policy, in either or both of the following cases, that it shall not be liable:

- (a) to indemnify any person engaged in the business of selling, repairing, maintaining, servicing, storing or parking automobiles for any loss or damage sustained while engaged in the use or operation of or while working upon the automobile in the course of that business unless the person is the owner of the automobile or is his employee;
- (b) for loss of or damage to property carried in or upon the automobile or to any property owned or rented by or in the care, custody or control of the insured.

**294.** Subject to the limitations and exclusions of the endorsement, the insurer may provide by endorsement to a contract evidenced by a motor vehicle liability policy, in either or both of the following cases, that it shall not be liable for loss or damage:

- (a) resulting from bodily injury to or the death of any person being carried in or upon or entering or getting on to or alighting from the automobile;
- (b) resulting from the ownership, use or operation of any machinery or apparatus, including its equipment, mounted on or attached to the automobile while such automobile is at the site of the use or operation of that machinery or apparatus.

**295.** (1) The insurer may provide under a contract evidenced by a motor vehicle liability policy, in one or more of the following cases, that it shall not be liable while:

- (a) the automobile is rented or leased to another person;
- (b) the automobile is used to carry explosives or to carry radioactive material for research, education, development or industrial purposes or for purposes incidental thereto;
- (c) the automobile is used as a taxi-cab, public omnibus, livery, jitney or sightseeing conveyance or for carrying passengers for compensation or hire;

Section 293. This corresponds to clauses (c) and (e) of section 296 of the Act.

Section 294. This corresponds to clauses (d) and (g) of section 296 of the Act.

Section 295. Subsection (1) incorporates the substance of present Statutory Conditions 3 and 4. Subsection (2) is new. Subsection (3) is new and it is designed to obviate the necessity of obtaining a specific endorsement where the grant would be a matter of course.

- (d) where the insured vehicle is an automobile, other than a trailer, it is used for towing a trailer owned by the insured unless like indemnity is also provided by the insurer in respect of the trailer;
  - (e) where the insured vehicle is a trailer, it is towed by an automobile owned by the insured unless like indemnity is also provided by the insurer in respect of the automobile.
- (2) In clause (b) of subsection (1) "radioactive material" means
- (a) spent nuclear fuel rods that have been exposed to radiation in a nuclear reactor, or
  - (b) radioactive waste material, or
  - (c) unused enriched nuclear fuel rods, or
  - (d) any other radioactive material of such quantity and quality as to be harmful to persons or property if its container were destroyed or damaged.
- (3) Clause (a) of subsection (1) does not include the use by an employee of his automobile on the business of his employer and for which he is paid.
- (4) Clause (c) of subsection (1) does not include
- (a) the use by a person of his automobile for the carriage of another person in return for the former's carriage in the automobile of the latter, or
  - (b) the occasional and infrequent use by a person of his automobile for the carriage of another person who shares the cost of the trip, or
  - (c) the use by a person of his automobile for the carriage of a temporary or permanent domestic servant of the insured or his spouse, or
  - (d) the use by a person of his automobile for the carriage of a client or customer or a prospective client or customer.

**296.** (1) Every contract evidenced by a motor vehicle liability policy insures, in respect of any one accident, to the limit of at least \$35,000, exclusive of interest and costs, against liability resulting from bodily injury to or the death of one or more persons and loss of or damage to property.

(2) The contract shall be interpreted to mean that where, by reason of any one accident, liability results from bodily injury or death and from loss of or damage to property,

- (a) claims against the insured arising out of bodily injury or death have priority to the extent of \$30,000 over claims arising out of loss of or damage to property, and
- (b) claims against the insured arising out of loss of or damage to property have priority to the extent of \$5,000 over claims arising out of bodily injury or death.

Section 296. This corresponds to section 297 of the Act. However, subsection (3) hereof is new and allows for split limits provided each is for not less than \$35,000. Subsection (4) is also new.

(3) The insurer may, instead of specifying a limit in the policy for an inclusive amount, specify a limit of liability of at least \$35,000, exclusive of interest and costs, against liability resulting from bodily injury to or the death of one or more persons and a limit of liability of at least \$35,000, exclusive of interest and costs, against liability for loss of or damage to property.

(4) Nothing in this Part precludes an insurer, with respect to a limit or limits in excess of those specified in subsection (1) or (3), from increasing or reducing the limit or limits specified in the contract with respect to the use or operation of the automobile by a named person, but no reduction is effective for a limit less than that required under subsection (1) or (3).

**297.** (1) Every motor vehicle liability policy issued in Alberta shall provide that, in the case of liability arising out of the ownership, use or operation of the automobile in any province or territory of Canada,

- (a) the insurer shall be liable up to the minimum limits prescribed for that province or territory if those limits are higher than the limits prescribed by the policy,
- (b) the insurer shall not set up any defence to a claim that might not be set up if the policy were a motor vehicle liability policy issued in that province or territory, and
- (c) the insured, by acceptance of the policy, constitutes and appoints the insurer his irrevocable attorney to appear and defend in any province or territory of Canada in which an action is brought against the insured arising out of the ownership, use or operation of the automobile.

(2) A provision in a motor vehicle liability policy in accordance with clause (c) of subsection (1) is binding on the insured.

**298.** (1) Nothing in this Part precludes an insurer from providing insurance under a contract evidenced by a motor vehicle liability policy restricted to a limit in excess of that provided by another designated contract evidenced by a motor vehicle liability policy, whether the designated contract is a first loss insurance or an excess insurance.

(2) Where the contract designated in the excess contract terminates or is terminated, the excess contract is also automatically terminated.

**299.** Nothing in this Part precludes an insurer from entering into an agreement with its insured under a contract evidenced by a motor vehicle liability policy providing that the insured will reimburse the insurer in an agreed amount

Section 297. This section is new and should be considered in conjunction with new section 33 (4).

Section 298. This is new and provides for the writing of excess insurance—a practice which is necessary.

Section 299. This is new and gives statutory recognition to agreements between the insured and the insurer for deductible amounts.

in respect of any claim by or judgment in favour of a third party against the insured, and the agreement may be enforced against the insured according to its tenor.

**300.** (1) In this section "nuclear energy hazard" means the radioactive, toxic, explosive or other hazardous properties of prescribed substances under the *Atomic Energy Control Act* (Canada).

(2) Where an insured is covered, whether named therein or not, under a contract evidenced by a motor vehicle liability policy for loss or damage resulting from bodily injury to or the death of any person or damage to property arising directly or indirectly out of a nuclear energy hazard and is also covered, whether named therein or not, against such loss or damage under a contract evidenced by a policy of nuclear energy hazard liability insurance issued by a group of insurers and in force at the time of the event giving rise to the loss or damage,

(a) the motor vehicle liability insurance is excess to the nuclear energy hazard liability insurance, and the insurer under the contract of motor vehicle liability insurance is not liable to pay beyond the minimum limits prescribed by section 296, and

(b) the unnamed insured under the contract of nuclear energy liability insurance may, in respect of such loss or damage, recover indemnity under that contract in the same manner and to the same extent as if named therein as the insured, and for that purpose he shall be deemed to be a party to the contract and to have given consideration therefor.

(3) For the purpose of this section, a contract of nuclear energy hazard liability insurance shall be deemed to be in force at the time of the event giving rise to the loss or damage, notwithstanding that the limits of liability thereunder have been exhausted.

**301.** (1) Where a person is insured under more than one contract evidenced by a motor vehicle liability policy, whether the insurance is first loss insurance or excess, and a question arises under clause (b) of section 291 between an insurer and the insured or between the insurers as to which insurer shall undertake the obligation to defend in the name and on behalf of the insured, whether or not any insurer denies liability under its contract, the insured or any insurer may apply to the Supreme Court, and the court shall give such directions as may appear proper with respect to the performance of the obligation.

(2) On an application under subsection (1), the only parties entitled to notice thereof and to be heard thereon are the insured and his insurers, and no material or evidence used or taken upon such an application is admissible upon



**Section 300. This corresponds to section 296a of the Act.**

**Section 301. This corresponds to subsections (2) to (5) of section 295 of the Act.**

the trial of an action brought against the insured for loss or damage to persons or property arising out of the use or operation of the automobile in respect of which the insurance is provided.

(3) An order under subsection (1) does not affect the rights and obligations of the insurers in respect of payment of any indemnity under their respective policies.

(4) Where indemnity is provided to the insured under two or more contracts and one or more of them are excess insurance, the insurers shall, as between themselves, contribute to the payment of expenses, costs and reimbursement for which provision is made in section 291 in accordance with their respective liabilities for damages awarded against the insured.

**302.** (1) Any person who has a claim against an insured for which indemnity is provided by a contract evidenced by a motor vehicle liability policy, notwithstanding that such person is not a party to the contract, may, upon recovering a judgment therefor in any province or territory of Canada against the insured, have the insurance money payable under the contract applied in or towards satisfaction of his judgment and of any other judgments or claims against the insured covered by the contract and may, on behalf of himself and all persons having such judgments or claims, maintain an action against the insurer to have the insurance money so applied.

(2) No action shall be brought against an insurer under subsection (1) after the expiration of one year from the final determination of the action against the insured, including appeals if any.

(3) A creditor of the insured is not entitled to share in the insurance money payable under any contract unless his claim is one for which indemnity is provided for by that contract.

(4) The right of a person who is entitled under subsection (1) to have insurance money applied upon his judgment or claim is not prejudiced by

- (a) an assignment, waiver, surrender, cancellation or discharge of the contract, or of any interest therein or of the proceeds thereof, made by the insured after the happening of the event giving rise to a claim under the contract, or
- (b) any act or default of the insured before or after that event in contravention of this Part or of the terms of the contract, or
- (c) any contravention of the *Criminal Code* (Canada) or a statute of any province or territory of Canada or of any state or the District of Columbia of the United States of America by the owner or driver of the automobile,

Section 302. Except as to subsections (2), (7) and (8), which are new, this section corresponds to section 302 of the Act. Certain changes have been made in subsections (9), (10), (11) and (12) to clarify the wording and to give effect to the exclusions now contained in section 295 (1) hereof. These are in part presently contained in Statutory Conditions 3 and 4.

and nothing mentioned in clause (a), (b) or (c) is available to the insurer as a defence in an action brought under subsection (1).

(5) It is not a defence to an action under this section that an instrument issued as a motor vehicle liability policy by a person engaged in the business of an insurer and alleged by a party to the action to be such a policy is not a motor vehicle liability policy, and this section applies *mutatis mutandis* to the instrument.

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

(7) Where any person has recovered a judgment against the insured and is entitled to bring action under subsection (1), and the insurer admits liability to pay the insurance money under the contract and the insurer considers that

- (a) there are or may be other claimants, or
- (b) there is no person capable of giving and authorized to give a valid discharge for payment who is willing to do so,

the insurer may apply to the court *ex parte* 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.

(8) The receipt of the proper officer of the court is sufficient discharge to the insurer for the insurance money paid into court under subsection (7), and the insurance money shall be dealt with as the court may order upon application of any person interested therein.

(9) Notwithstanding anything contained therein to the contrary, every contract evidenced by a motor vehicle liability policy shall, for the purposes of this section, be deemed to provide all the types of coverage mentioned in section 295, but the insurer is not liable to a claimant,

- (a) where the claim results from bodily injury to or the death of any person being carried in or upon or entering or getting on to or alighting from the automobile, or
- (b) with respect to such coverage in excess of the limits mentioned in section 296.

(10) Where one or more contracts provide for coverage of a type mentioned in section 293 or 294, except as provided in subsection (12), the insurer may,

- (a) with respect to that type of coverage, and



(b) as against a claimant,  
avail itself of any defence that it is entitled to set up against  
the insured, notwithstanding subsection (4).

(11) Where one or more contracts provide for coverage  
in excess of the limits mentioned in section 296, except as  
provided in subsection (12), the insurer may,

(a) with respect to the coverage in excess of those  
limits, and

(b) as against a claimant,  
avail itself of any defence that it is entitled to set up against  
the insured, notwithstanding subsection (4).

(12) Where a contract provides coverage of the type men-  
tioned in clause (a) of section 294 in respect of an auto-  
mobile operated in the business of carrying passengers for  
compensation or hire and insured for that purpose, the in-  
surer may,

(a) with respect to that type of coverage, and

(b) as against a claimant,

only avail itself of a defence that it is entitled to set up  
against the insured in respect of that part of the coverage,  
if any, that exceeds,

(c) the limits mentioned in section 296, or

(d) the minimum limits required for that type of cover-  
age by or under any other Act,

whichever is the greater.

(13) The insured shall reimburse the insurer upon de-  
mand in the amount that the insurer has paid by reason of  
this section and that it would not otherwise be liable to pay.

(14) Where an insurer denies liability under a contract  
evidenced by a motor vehicle liability policy, it shall, upon  
application to the court, be made a third party in any action  
to which the insured is a party and in which a claim is made  
against the insured by any party to the action in which it is  
or might be asserted that indemnity is provided by the  
contract, whether or not the insured enters an appearance  
or defence in the action.

(15) Upon being made a third party, the insurer may

(a) contest the liability of the insured to any party  
claiming against the insured,

(b) contest the amount of any claim made against the  
insured,

(c) deliver any pleadings in respect of the claim of any  
party claiming against the insured,

(d) have production and discovery from any party ad-  
verse in interest, and

(e) examine and cross-examine witnesses at the trial,  
to the same extent as if it were a defendant in the action.



(16) An insurer may avail itself of subsection (15) notwithstanding that another insurer is defending in the name and on behalf of the insured an action to which its insured is a party.

**303.** (1) Every insured against whom an action is commenced for damages occasioned by an automobile shall give notice thereof in writing to the insurer within five days after service of every notice or process in the action.

(2) Every insured against whom an action is commenced for damages occasioned by an automobile shall, upon recovery of a judgment against the insured, disclose to a judgment creditor entitled to the benefit of any motor vehicle liability policy particulars of such contract within 10 days after written demand therefor.

#### **Physical Damage Cover**

**304.** Subject to subsection (1) of section 280, the insurer may provide in a contract such exclusions and limitations, in respect of loss of or damage to or the loss of use of the automobile, as it considers necessary.

**305.** (1) A contract or part of a contract providing insurance against loss of or damage to an automobile and the loss of use thereof may contain a clause to the effect that, in the event of loss, the insurer shall pay only

(a) an agreed portion of any loss that may be sustained, or

(b) the amount of the loss after deduction of a sum specified in the policy,

and in either case not exceeding the amount of the insurance.

(2) Where a clause is inserted in accordance with subsection (1), there shall be printed or stamped upon the face of the policy in conspicuous type the words: "This policy contains a partial payment of loss clause."

**305a.** (1) Where a claim is made under any contract other than a contract evidenced by a motor vehicle liability policy, the insurer shall, notwithstanding any agreement, adjust the amount of the claim with the insured named in the contract as well as with any person having an interest indicated in the contract.

(2) Where notice is given or proof of loss is made by a person other than the insured, because the insured cannot be located or neglects or refuses or is unable to give notice and make claim under statutory conditions 4 and 7 in section 284, the insurer may, notwithstanding subsection (1) but in any event not earlier than 60 days from delivery of the proof required under clause (c) of subsection (1) of statutory condition 4, adjust and pay the claim to the other person having an interest indicated in the contract.



Section 303. This is new.

Section 304. This is new but corresponds to the present interpretation of the Act, namely, allowing freedom, subject to approval, of exclusions in the physical damage cover.

Section 305. This corresponds to section 303 of the Act.

Section 305a. (1) This corresponds to section 304 of the Act.

(2) This is new and is designed, subject to safeguards, to allow a loss payee to make claim when the insured is not available.

### Limited Accident Insurances

**305b.** (1) Where an insurer provides in a contract insurance against loss resulting from bodily injury to or the death of a person insured arising out of an accident involving an automobile where

- (a) there is legal liability of another person for the injury or death, and
- (b) the other person has no insurance against his liability therefor or that person cannot be identified, that insurance applies only in respect of
- (c) any person who sustains bodily injury or death while driving, being carried in or upon or entering or getting on to or alighting from the described automobile in respect of which insurance of the class mentioned in subclause (i) of clause 6 of section 2 is provided under the contract, and
- (d) the insured named in the contract and his or her spouse and any dependent relative residing in the same dwelling premises as the insured named in the contract who sustains bodily injury or death while driving, being carried in or upon or entering or getting on to or alighting from or as a result of being struck by any other automobile that is defined in the contract for the purposes of that insurance.

(2) The insurance mentioned in subsection (1) does not apply in respect of a person specified therein who has a right of recovery under *The Motor Vehicle Accident Claims Act* or similar legislation of any other province or territory of Canada or of any state or the District of Columbia of the United States of America.

**305c.** (1) Where in a contract an insurer provides insurance against expenses for medical, surgical, dental, ambulance, hospital, professional nursing or funeral services, the insurance applies only in respect of reasonable expenses

- (a) of or incurred for any person who sustains bodily injury or death while driving or being carried in or upon or entering or getting on to or alighting from or, if not the occupant of another automobile, as a result of being struck by an automobile owned by the insured named in the contract in respect of which insurance of the class mentioned in subclause (i) of clause 6 of section 2 is provided under the contract, and
- (b) of the insured named in the contract and his or her spouse and any dependent relative residing in the same dwelling premises as the insured named in the contract who sustains bodily injury or death while driving or being carried in or upon or entering or getting on to or alighting from or as a result of

Section 305b. This is new. This provides for writing as Automobile Insurance a coverage entitling the insured under an Automobile policy to recover from his own insurer the amount of damages he would have recovered against an uninsured motorist negligently causing the insured injury. By reason of subsection (2) it is restricted practically to operation in the United States where this type of coverage takes the place of Unsatisfied or Accident Victims funds.

Section 305c. This provision provides for the writing of medical payments cover and corresponds to section 299 of the Act with this change, namely, that medical payments have been made an integral part of Automobile Insurance. Subsection (2) and the following subsections are procedural for dealing with overlapping between policies.

being struck by any other automobile that is defined in the contract for the purposes of that insurance.

(2) Where an insurer makes a payment under a contract of insurance referred to in subsection (1), the payment constitutes, to the extent of such payment, a release by the insured person or his personal representatives of any claim that the insured person or his personal representatives or any person claiming through or under him or by virtue of *The Fatal Accidents Act* may have against the insurer and by any other person who may be liable to the insured person or his personal representatives if that other person is insured under a contract of the same type as is specified in subsection (1), but nothing in this subsection precludes an insurer from demanding, as a condition precedent to payment, a release to the extent of the payment from the person insured or his personal representatives or any other person.

(3) The insurance mentioned in clause (a) of subsection (1) is a first loss insurance, and any other automobile insurance of the same type available to the injured person or in respect of a deceased person is excess insurance only.

(4) The insurance mentioned in clause (a) of subsection (1) is excess insurance to any other insurance not being automobile insurance of the same type indemnifying the injured person or in respect of a deceased person for the expenses.

(5) The insurance mentioned in clause (b) of subsection (1) is excess insurance to any other insurance indemnifying the injured person or in respect of a deceased person for the expenses.

**305d.** (1) Where in a contract an insurer provides accident insurance benefits in respect of the death of or injury to an insured person arising out of an accident involving an automobile, the insurance applies only in respect of

- (a) any person who sustains bodily injury or death while driving or being carried in or upon or entering or getting on to or alighting from or, if not the occupant of another automobile, as a result of being struck by an automobile owned by the insured named in the contract in respect of which insurance of the class mentioned in subclause (i) of clause 6 of section 2 is provided under the contract, and
- (b) the insured named in the contract and his or her spouse and any dependent relative residing in the same dwelling premises as the named insured who sustains bodily injury or death while driving or being carried in or upon or entering or getting on to or alighting from or as a result of being struck by any other automobile that is defined in the policy for the purposes of the insurance.

Section 305d. This is new. This provides for limited accident insurance as an integral part of the Automobile Insurance Policy. Subsection (2) and the following subsections are procedural for dealing with overlapping between policies.

(2) Where an insurer makes a payment under a contract of insurance to which subsection (1) refers, the payment constitutes, to the extent of such payment, a release by the insured person or his personal representatives of any claim that the insured person or his personal representatives or any person claiming through or under him or by virtue of *The Fatal Accidents Act* may have against the insurer and by any other person who may be liable to the insured person or his personal representatives if that other person is insured under a contract of the same type as is specified in subsection (1), but nothing in this subsection precludes an insurer from demanding, as a condition precedent to payment, a release to the extent of the payment from the person insured or his personal representatives or any other person.

(3) Subject to subsection (5), the insurance mentioned in clause (a) of subsection (1) is a first loss insurance, and any other automobile insurance of the same type available to the injured person or in respect of a deceased person is excess insurance only.

(4) Subject to subsection (5), the insurance mentioned in clause (b) of subsection (1) is excess insurance over any other automobile insurance of the same type available to the injured person or in respect of a deceased person.

(5) Where a person is entitled to benefits under more than one contract providing insurance of the type mentioned in this section, he or his personal representative or any person claiming through or under him or by virtue of *The Fatal Accidents Act* may recover only an amount equal to

- (a) one benefit, if the benefits under the contracts are of the same limit, or
- (b) the highest benefit, if the benefits under the contracts are not of the same limit.

**305e.** (1) Where a person is injured or killed in an accident in Alberta involving an automobile, that person or his personal representative may serve

- (a) a demand by registered mail on the owner of the automobile, or
- (b) a demand by registered mail on the insurer of the owner of the automobile,

requiring the owner or insurer, as the case may be, to state in writing to the person making the demand whether or not that owner has insurance of the type mentioned in section 305c or 305d or either of them, and, where the demand is made under clause (a), requiring the owner, if he has such insurance, to state the name of the insurer.

(2) An owner or insurer who does not, within 10 days after receiving a demand made under subsection (1), comply with the demand is guilty of an offence.

Section 305e. This is new. This section and the four following sections are necessary to give effect to the coverages provided under sections 305c and 305d.

**305f.** Any person insured by but not named in a contract to which section 305c or 305d applies may recover under the contract in the same manner and to the same extent as if named therein as the insured, and for that purpose shall be deemed to be a party to the contract and to have given consideration therefor.

**305g.** (1) Where an insurer admits liability for insurance money payable under section 305b, 305c or 305d and it appears that

- (a) there are adverse claimants, or
- (b) the whereabouts of an insured person entitled is unknown, or
- (c) there is no person capable of giving and authorized to give a valid discharge therefor who is willing to do so,

the insurer may, at any time after 30 days after the date upon which the insurance money becomes payable, apply to the court *ex parte* for an order for payment of the money into the Supreme Court, and the court may upon such notice, if any, as it thinks necessary make an order accordingly.

(2) The receipt of the proper officer of the court is sufficient discharge to the insurer for the insurance money paid into the Supreme Court, and the insurance money shall be dealt with as the court orders.

**305h.** Every action or proceeding against an insurer under a contract in respect of insurance provided under section 305b, 305c or 305d shall be commenced within the limitation period specified in the contract, but in no event shall the limitation period be less than one year after the happening of the accident.

**305i.** Where any person makes a claim for damages in respect of bodily injury or death sustained by the person or any other person while driving or being carried in or upon or entering or getting on to or alighting from or as a result of being struck by an automobile, he shall, if required by the person against whom the claim is made or by someone acting on his behalf, furnish to or for that person full particulars of all insurance available to the claimant under contracts falling within the scope of section 305c or 305d, and of any payments of insurance money made or to be made thereunder.

**305j.** Subject to subsection (1) of section 280, an insurer may in a policy

- (a) provide insurance that is less extensive in scope than the insurance mentioned in section 305b, 305c or 305d, and
- (b) provide the terms of the contract that relate to the insurance mentioned in section 305b, 305c or 305d.



Section 305f. This is new.

Section 305g. This is new.

Section 305h. This is new.

Section 305i. This is new.

Section 305j. This is new but corresponds in principal to the cover with respect to medical payments provided for under section 299 of the Act.

#### Other Insurance

**305k.** (1) Subject to section 300, insurance under a contract evidenced by a valid owner's policy of the kind mentioned in clause 46a of section 2 is, in respect of liability arising from or occurring in connection with the ownership, use or operation of an automobile owned by the insured named in the contract and within the description or definition thereof in the policy, a first loss insurance, and insurance attaching under any other valid motor vehicle liability policy is excess insurance only.

(2) Subject to sections 300, 305c and 305d and to subsection (1) of this section, if the insured named in a contract has or places any other valid insurance, whether against liability for the ownership, use or operation of or against loss of or damage to an automobile or otherwise, of his interest in the subject matter of the contract or any part thereof, the insurer is liable only for its rateable proportion of any liability, expense, loss or damage.

#### Subrogation

**305l.** (1) an insurer who makes any payment or assumes liability therefor under a contract 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 those rights.

(2) Where the net amount recovered whether by action or on settlement is, after deduction of the costs of the recovery, not sufficient to provide complete indemnity for the loss or damage suffered, the amount remaining shall be divided between the insurer and the insured in the proportion in which the loss or damage has been borne by them.

(3) Where the interest of an insured in any recovery is limited to the amount provided under a clause in the contract to which section 305 applies, the insurer shall have control of the action.

(4) Where the interest of an insured in any recovery exceeds that referred to in subsection (2) and the insured and the insurer cannot agree as to

- (a) the solicitors to be instructed to bring the action in the name of the insured, or
- (b) the conduct and carriage of the action or any matters pertaining thereto, or
- (c) any offer of settlement or the apportionment thereof, whether action has been commenced or not, or
- (d) the acceptance of any money paid into court or the apportionment thereof, or
- (e) the apportionment of costs, or
- (f) the launching or prosecution of an appeal,

either party may apply to the Supreme Court for the determination of the matters in question, and the court shall

Section 305k. This corresponds to section 300 of the Act.

Section 305l. This corresponds to section 290 of the Act. There have, however, been some changes consequent upon the fact that certain limited accident coverages have been provided under the Bill. The provisions of this section will deal with the carriage of the action.

make such order as it considers reasonable having regard to the interests of the insured and the insurer in any recovery in the action or proposed action or in any offer of settlement.

(5) On an application under subsection (4), the only parties entitled to notice and to be heard thereon are the insured and the insurer, and no material or evidence used or taken upon the application is admissible upon the trial of an action brought by or against the insured or the insurer.

(6) A settlement or release given before or after an action is brought does not bar the rights of the insured or the insurer, as the case may be, unless they have concurred therein.

**9.** Part VII of *The Alberta Insurance Act* as it was in force immediately before the day on which section 8 comes into force continues to apply to contracts of automobile insurance made before the day on which section 8 comes into force until the contract expires or is cancelled or renewed.

**10.** Section 307, subsection (2) is amended by striking out clause (e) and by substituting the following:

(e) insurance provided under section 305b, 305c or 305d.

**11.** Sections 320i and 347 are repealed.

**12.** Schedule D is struck out.

**13.** This Act comes into force on a day to be fixed by Proclamation.

**9.** Exception of existing contracts.

**10.** Cross references are changed to conform to the new section numbers.

**11.** The subject matter of the repealed sections is covered in the new sections 187*a* to 187*d*. See clause 6 of this Bill.

**12.** The present automobile statutory conditions are repealed.