

1970 Bill 44^t

Third Session, 16th Legislature, 19 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 44

An Act to amend The Alberta Insurance Act

THE PROVINCIAL SECRETARY

First Reading

Second Reading

Third Reading

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BILL 44

1970

An Act to amend The Alberta Insurance Act

(Assented to _____, 1970)

HER 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 by striking out clause 7.
3. Section 91 is amended
 - (a) as to subsection (2) by striking out clause (l) and by substituting the following:
 - (l) the fully paid common shares of a corporation that during a period of five years that ended less than one year before the date of investment has either
 - (i) paid a dividend in each such year upon its common shares, or
 - (ii) had earnings in each such year available for the payment of a dividend upon its common shares,
of at least 4 per cent of the average value at which the shares were carried in the capital stock account of the corporation during the year in which the dividend was paid or in which the corporation had earnings available for the payment of dividends, as the case may be; or
 - (b) as to subsection (2), clause (m) by striking out the word "sixty" and by substituting the figure "75",
 - (c) as to subsection (3), clause (b) by striking out the word "sixty" wherever it occurs and by substituting the figure "75",
 - (d) as to subsection (5), clause (c) by striking out the word "three" and by substituting the figure "7",
 - (e) as to subsection (8) by striking out the word "fifteen" and by substituting the figure "25".

Explanatory Notes

1. This Bill will amend chapter 159 of the Revised Statutes.

2. Clause 7 reads:

7. "beneficiary" means a person designated or appointed as one to whom or for whose benefit insurance money is to be payable;

3. Section 91(2)(1) and (m), (3)(b), (5)(c) and (8) presently read:

(2) A company may only invest its funds or any portion thereof in

.....

(1) the fully paid common shares of a corporation that, in each year of a period of seven years ended less than one year before the date of investment, has paid a dividend upon its common shares of at least 4 per cent of the average value at which the shares were carried in the capital stock account of the corporation during the year in which the dividend was paid; or

(m) ground rents, mortgages or hypothecs on real estate in Alberta or elsewhere where the company is carrying on business, but the amount paid for the mortgage or hypothec together with the amount of indebtedness under any mortgage or hypothec on the real estate ranking superior to the mortgage or hypothec in which the investment is made shall not exceed 60 per cent of the value of the real estate covered thereby; or

(3) A company may lend its funds or any portion thereof on the security of

.....

(b) real estate or leaseholds for a term of years or other estate or interest in real estate in Alberta or elsewhere where the company is carrying on business, but the amount of the loan together with the amount of the indebtedness under any mortgage or hypothec on the real estate or interest therein ranking superior to the loan shall not exceed 60 per cent of the value of the real estate or interest therein, subject to the exception that a company may accept as part payment for real estate sold by it a mortgage or hypothec for more than 60 per cent of the sale price of the real estate, or

(5) A company may make investments or loans not hereinbefore authorized by this section, including investments in real estate or leaseholds, subject to the following provisions:

.....

(c) the total book value of the investments and loans made under this subsection and held by the company, excluding those that are or at any time since acquisition have been eligible apart from this subsection, shall not exceed 3 per cent of the book value of the total assets of the company.

(8) The total book value of the investments of a company in common shares shall not exceed 15 per cent of the book value of the total assets of the company.

4. Section 131 is amended by striking out subsection (3).

5. Section 188, subsection (3) is amended by striking out

- (a) the words "or any promise to pay",
- (b) the words "or other promise to pay,".

6. Section 189 is amended

- (a) by striking out subsection (2) and by substituting the following:

(2) An insurer who neglects or refuses to comply with subsection (1) is guilty of an offence, and, in addition, the provisions of section 190 are not available to the insurer as a defence to an action brought, after the neglect or refusal, for the recovery of money payable under the contract of insurance.

- (b) by adding the following subsection:

(4) An insurer by furnishing forms to make proof of loss shall not be taken to have admitted that a valid contract is in force or that the loss in question falls within the insurance provided by the contract.

7. Section 210 is amended

- (a) by striking out Statutory Condition 5 and by substituting the following:

**Termination of
Insurance**

5. (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 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 shor

4. Section 131 (3) reads:

(3) No person is eligible to be or become a shareholders' director or an ordinary director unless he holds in his own name and for his own use shares of the capital stock of the company to the amount of at least \$2,500 and has paid in cash all calls due thereon and all liabilities incurred by him to the company.

5. Section 188 (3) presently reads:

(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.

6. Section 189 (1) and (2) read:

189. (1) Every insurer, immediately upon receipt of a request, and in any event not later than 60 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. (Effective Jan. 1, 1959)

(2) Every insurer who neglects or refuses to comply with the provisions of subsection (1) is guilty of an offence.

7. Statutory Conditions 5, 11 and 15 presently read:

**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 15 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 insured, 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 15 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.

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 by 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.

- (b) by striking out Statutory Condition 11 and by substituting the following:

Appraisal

11. In the event of disagreement as to the value of the property insured, the property saved or the amount of the loss, those questions shall be determined by appraisal as provided under *The Insurance Act* before there can be any recovery under this contract whether the right to recovery 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 thereof is made in writing and until after proof of loss has been delivered.

- (c) by striking out Statutory Condition 15 and by substituting the following:

Notice

15. 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.

8. Section 284 is amended

- (a) as to Statutory Condition 2, subcondition (1) by adding the following clause after clause (b):

(bb) while his licence to drive or operate an automobile is suspended or while his right to obtain a licence is suspended or while he is prohibited under order of any court from driving or operating an automobile; or

- (b) as to Statutory Condition 2, subcondition (2) by adding the following clause after clause (b):

(bb) by any person who is a member of the household of the insured while his licence to drive or operate an automobile is suspended or while his right to obtain a licence is suspended or while he is prohibited under order of any court from driving or operating an automobile; or

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.

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.

8. Statutory Conditions 2(1)(b) and (2) (b) read:

2. (1) The insured shall not drive or operate the automobile,

.....

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

(2) The insured shall not permit, suffer, allow or connive at the use of the automobile,

.....

(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

9. The following section is added after section 291:

291a. Liability arising from contamination of property carried in an automobile shall not be deemed to be liability arising from the ownership, use or operation of that automobile.

10. The following section is added after section 302:

302a. (1) Where an insurer makes a payment on behalf of an insured under a contract evidenced by a motor vehicle liability policy to a person who is or alleges himself to be entitled to recover from the insured covered by the policy, the payment constitutes, to the extent of the payment, a release by the person or his personal representative of any claim that the person or his personal representative or any person claiming through or under him or by virtue of *The Fatal Accidents Act* may have against the insured and the insurer.

(2) Nothing in this section precludes the insurer making the payment from demanding, as a condition precedent to the payment, release from the person or his personal representative or any other person to the extent of the payment.

(3) Where the person commences an action the court shall adjudicate upon the matter first without reference to the payment but in giving judgment the payment shall be taken into account and the person is only entitled to judgment for the net amount, if any.

(4) The intention of this section is to permit payments to a claimant without prejudice to the defendant or his insurer, either as an admission of liability or otherwise, and the fact of any payment shall not be disclosed to the judge or jury until after judgment but before formal entry thereof.

11. Section 305c, subsection (2) is amended by striking out the word "by" in the eighth line thereof.

12. Section 305d, subsection (2) is amended by striking out the word "by" in the eighth line thereof.

13. Section 305f is amended by adding after the word "section" the figure "305b,".

14. Section 305k is amended by adding the following subsection:

- (3) In subsection (2) "rateable proportion" means,
- (a) if there are two insurers liable and each has the same policy limits, that each of the insurers is liable to share equally in any liability, expense, loss or damage, or

9. Liability from contamination.

10. Payment may operate as release of claim.

11. Typographical error corrected.

12. Typographical error corrected.

13. Section 305f presently reads:

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.

14. Section 305k (2) reads:

(2) Subject to section 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.

(b) if there are two insurers liable with different policy limits, that the insurers are liable to share equally up to the limit of the smaller policy limit, and if there are more than two insurers liable clauses (a) and (b) apply *mutatis mutandis*.

15. Part 8 is struck out and the following is substituted:

PART 8

ACCIDENT AND SICKNESS INSURANCE

306. In this Part,

- (a) “application” means a written application for insurance or for the reinstatement of insurance;
- (b) “beneficiary” means a person designated or appointed in a contract or by a declaration, other than the insured or his personal representative, to whom or for whose benefit insurance money payable in the event of death by accident is to be paid;
- (c) “blanket insurance” means that class of group insurance which covers loss arising from specific hazards incident to or defined by reference to a particular activity or activities;
- (d) “contract” means a contract of insurance;
- (e) “court” means the Supreme Court of Alberta or a judge thereof;
- (f) “creditor’s group insurance” means 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;
- (g) “declaration” means an instrument signed by the insured
 - (i) with respect to which an endorsement is made on the policy, or
 - (ii) that identifies the contract, or
 - (iii) that describes the insurance or insurance fund or a part thereof,in which he designates or alters or revokes the designation of his personal representative or a beneficiary as one to whom or for whose benefit shall be paid the insurance money which is payable in the event of death by accident;
- (h) “family insurance” means insurance whereby the lives or well-being, or the lives and well-being, of the insured and one or more persons related to him by blood, marriage or adoption are insured under a single contract between an insurer and the insured;
- (i) “group insurance” means insurance other than creditor’s group insurance and family insurance, whereby the lives or well-being, or the lives and

15. Accident and sickness insurance provisions revised.

well-being, of a number of persons are insured severally under a single contract between an insurer and an employer or other person;

- (j) “group person insured” means a person who is insured under a contract of group insurance and upon whom a right is conferred by the contract, but does not include a person who is insured thereunder as a person dependent upon or related to him;
- (k) “instrument” includes a will;
- (l) “insurance” means accident insurance, sickness insurance, or accident insurance and sickness insurance;
- (m) “insured”,
 - (i) in the case of group insurance means, in the provisions of this Part relating to the designation of beneficiaries or of personal representatives as recipients of insurance money and their rights and status, the group person insured, and
 - (ii) in all other cases means the person who makes a contract with an insurer;
- (n) “person insured” means a person in respect of an accident to whom, or in respect of whose sickness, insurance money is payable under a contract, but does not include a group person insured;
- (o) “will” includes a codicil.

307. (1) Notwithstanding any agreement, condition or stipulation to the contrary, this Part applies to a contract made in Alberta on and after the day on which this section comes into force, and sections 306, 307, 308, 309, 316, 319, 320, 320*a* and 320*e* and sections 320*g* to 320*w* apply also to a contract made in Alberta before that day.

(2) Sections 309, 310, 311, 312, 314, 320*a* and 320*d* of *The Alberta Insurance Act* in force immediately prior to the day on which this section comes into force apply to a contract made in Alberta before that day.

- (3) This Part does not apply to
 - (a) accidental death insurance, or
 - (b) creditor’s group insurance, or
 - (c) disability insurance, or
 - (d) insurance provided under section 305*b*, 305*c* or 305*d*.

308. In the case of a contract of group insurance made with an insurer authorized to transact insurance in Alberta at the time the contract was made, this Part applies in determining

- (a) the rights and status of beneficiaries and personal representatives as recipients of insurance money, if the group person insured was resident in Alberta at the time he became insured, and
- (b) the rights and obligations of the group person insured if he was resident in Alberta at the time he became insured.

309. An insurer entering into a contract shall issue a policy.

310. (1) This section does not apply to

- (a) a contract of group insurance, or
- (b) a contract made by a fraternal society.

(2) An insurer shall set forth the following particulars in the policy:

1. the name or a sufficient description of the insured and of the person insured;
2. the amount or the method of determining the amount of the insurance money payable and the conditions under which it becomes payable;
3. the amount or the method of determining the amount of the premium and the period of grace, if any, within which it may be paid;
4. the conditions upon which the contract may be reinstated if it lapses;
5. the term of the insurance or the method of determining the day upon which the insurance commences and terminates.

311. In the case of a contract of group insurance, an insurer shall set forth the following particulars in the policy:

1. the name or a sufficient description of the insured;
2. the method of determining the group persons insured and persons insured;
3. the amount or the method of determining the amount of the insurance money payable and the conditions under which it becomes payable;
4. the period of grace, if any, within which the premium may be paid;
5. the term of the insurance or the method of determining the day upon which the insurance commences and terminates.

312. (1) Except as provided in subsection (2), in the case of a contract of group insurance an insurer shall issue for delivery by the insured to each group person insured a certificate or other document in which are set forth the following particulars:

1. the name of the insurer and a sufficient identification of the contract;
2. the amount or the method of determining the amount of insurance on the group person insured and on any person insured;
3. the circumstances under which the insurance terminates, and the rights, if any, upon such termination of the group person insured and of any person insured.

(2) This section does not apply to a contract of blanket insurance or to a contract of group insurance of a non-renewable type issued for a term of six months or less.

313. (1) Subject to section 314 and except as otherwise provided in this section, 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) The exception or reduction mentioned in section 320f need not be set forth in the policy.

(5) this section does not apply to a contract made by a fraternal society.

314. Subject to section 315, the conditions set forth in this section shall be deemed to be part of every contract other than a contract of group insurance, and shall be printed on or attached to the policy forming part of such contract with the heading "Statutory Conditions".

Statutory Conditions

The Contract 1. (1) The application, this policy, any document attached to this policy when issued, and any amendment to the contract agreed upon in writing after the policy is issued, constitute the entire contract, and no agent has authority to change the contract or waive any of its provisions.

Waiver (2) 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.

Copy of Application (3) The insurer shall, upon request, furnish to the insured or to a claimant under the contract a copy of the application.

Material Facts 2. No statement made by the insured or person insured at the time of application for the contract shall be used in defence of a claim under or to avoid this contract unless it is contained in the application or any other written statements or answers furnished as evidence of insurability.

Changes in Occupation 3. (1) If after the contract 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 contract, 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 contract to an occupation classified by the insurer as less hazardous and the insurer is so advised in writing, the insurer shall either

(a) reduce the premium rate, or

(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.

Relation of Earnings to Insurance 4. 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.

Termination by Insured 5. The insured may terminate this 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 calculated to the date of receipt of such notice according to the table in use by the insurer at the time of termination.

Termination by Insurer 6. (1) The insurer may terminate this 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, 10 days' notice of termination shall be given, and the 10 days shall begin on the day following the date of mailing of notice.

Notice and Proof of Claim 7. (1) The insured or a person insured, or a beneficiary entitled to make a claim, or the agent of any of them, 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 30 days from the date a claim arises under the contract on account of an accident, sickness or disability,
- (b) within 90 days from the date a claim arises under the contract on account of an accident, sickness or disability, furnish to the insurer such proof as is reasonably possible in the circumstances of the happening of the accident or the commencement of the sickness or disability, and the loss occasioned thereby, the right of the claimant to receive payment, his age and the age of the beneficiary if relevant, and
- (c) if so required by the insurer, furnish a satisfactory certificate as to the cause or nature of the accident, sickness or disability for which claim may be made under the contract and as to the duration of such disability.

Failure to Give Notice or Proof (2) Failure to give notice of claim or furnish proof of claim within the time prescribed by this statutory condition does 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 date a claim arises under the contract on account of sickness or disability if it is shown that it was not reasonably possible to give notice or furnish proof within the time so prescribed.

Insurer to Furnish Forms for Proof of Claim 8. The insurer shall furnish forms for proof of claim within 15 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 cause or nature of the accident, sickness or disability giving rise to the claim and of the extent of the loss.

Rights of Examination 9. As a condition precedent to recovery of insurance moneys under this contract,

- (a) the claimant shall afford to the insurer an opportunity to examine the person of the person insured when and so often as it reasonably requires while the claim hereunder is pending, and

(b) in the case of death of the person insured, the insurer may require an autopsy subject to any law of the applicable jurisdiction relating to autopsies.

When Moneys Payable Other Than for Loss of Time 10. All moneys payable under this contract, other than benefits for loss of time, shall be paid by the insurer within 60 days after it has received proof of claim.

When Loss of Time Benefits Payable 11. The initial benefits for loss of time shall be paid by the insurer within 30 days after it has received proof of claim, and payment shall be made thereafter in accordance with the terms of the contract but not less frequently than once in each succeeding 60 days while the insurer remains liable for the payments if the person insured when required to do so furnishes before payment proof of continuing disability.

Limitation of Actions 12. An action or proceeding against the insurer for the recovery of a claim under this contract shall not be commenced more than one year after the date the insurance money became payable or would have become payable if it had been a valid claim.

315. (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 shall be omitted from the policy if the contract does not provide that it may be terminated by the insurer prior to the expiry of any period for which a premium has been accepted.

(4) Statutory Conditions 3, 4, 5, 6 and 9, and subject to the restriction in subsection (5), Statutory Condition 7, may be varied but if by reason of the variation the contract is less favorable to the insured, a person insured or a 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 314.

(5) Clauses (a) and (b) of paragraph (1) of Statutory Condition 7 may not be varied in policies providing benefits for loss of time.

(6) 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.

(7) 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.

(8) 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:

The Contract

1. (1) This policy, the Act or instrument of incorporation of the society, its constitution, by-laws and rules, and the amendments made from time to time to any of them, 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.

and

- (b) Statutory Condition 5 shall not be printed on the policy.

316. In the case of a policy of accident insurance of a non-renewable type issued for a term of six months or less or in relation to a ticket of travel, the statutory conditions need not be printed on or attached to 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 in *The Insurance Act* respecting contracts of accident insurance.”

317. (1) Where a policy evidencing a contract or a certificate evidencing the renewal of a contract is delivered to the insured and the initial premium or in the case of a renewal certificate the renewal premium therefor has not been fully paid,

- (a) the contract or the renewal thereof evidenced by the certificate is as binding on the insurer as if the premium had been paid although delivered by an officer or an agent of the insurer who did not have authority to deliver it, and
- (b) the contract may be terminated for the non-payment of the premium by the insurer upon 10 days' notice of termination given in writing to the insured and mailed postage prepaid and registered to the latest address of the insured on the records of the insurer and the 10 days shall begin on the day following the date of mailing such notice.

(2) This section does not apply to a contract of group insurance or to a contract made by a fraternal society.

318. (1) An insurer may

- (a) deduct unpaid premiums from an amount that it is liable to pay under a contract, or
- (b) sue the insured for unpaid premiums.

(2) Where a cheque or other bill of exchange or a promissory note or other written promise to pay is given for the

whole or part of a premium and payment is not made according to its tenor the premium or part thereof shall be deemed never to have been paid.

(3) Subsection (1), clause (a) does not apply to a contract of group insurance.

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

319. Without restricting the meaning of the expression “insurable interest”, a person has an insurable interest in his own life and well-being and in the life and well-being of

- (a) his child or grandchild,
- (b) his spouse,
- (c) any person upon whom he is wholly or in part dependent for, or from whom he is receiving, support or education,
- (d) his officer or employee, and
- (e) any person in whom he has a pecuniary interest.

320. (1) Subject to subsection (2), where at the time a contract would otherwise take effect, the insured has no insurable interest, the contract is void.

(2) A contract is not void for lack of insurable interest

- (a) if it is a contract of group insurance, or
- (b) if the person insured has consented in writing to the insurance.

(3) Where the person insured is under the age of 16 years, consent to the insurance may be given by one of his parents or by a person standing in *loco parentis* to him.

Policies on Lives of Minors

320a. (1) Except in respect of his rights as beneficiary, a minor who has attained the age of 16 years has the capacity of a person of the age of 21 years

- (a) to make an enforceable contract, and
- (b) in respect of a contract.

(2) A beneficiary who has attained the age of 18 years has the capacity of a person of the age of 21 years to receive insurance money payable to him and to give a valid discharge therefor.

Misrepresentation and Non-Disclosure

320b. (1) An applicant for insurance on his own behalf and on behalf of each person to be insured, and each person to be insured, shall disclose to the insurer in any application, on a medical examination, if any, and in any

written statements or answers furnished as evidence of insurability, every fact within his knowledge that is material to the insurance and is not so disclosed by the other.

(2) Subject to sections 320c and 320f, a failure to disclose, or a misrepresentation of, such a fact renders a contract voidable by the insurer.

(3) In the case of a contract of group insurance, a failure to disclose or a misrepresentation of such a fact with respect to a group person insured or a person insured under the contract does not render the contract voidable, but if evidence of insurability is specifically requested by the insurer, the insurance in respect of such a person is, subject to section 320c, voidable by the insurer.

320c. (1) Subject to section 320f and except as provided in subsection (2),

- (a) where a contract, including renewals thereof, except a contract of group insurance, has been in effect continuously for two years with respect to a person insured, a failure to disclose or a misrepresentation of a fact with respect to that person required by section 320b to be disclosed does not, except in the case of fraud, render the contract voidable;
- (b) where a contract of group insurance, including renewals thereof, has been in effect continuously for two years with respect to a group person insured or a person insured, a failure to disclose or a misrepresentation of a fact with respect to that group person insured or person insured required by section 320b to be disclosed does not, except in the case of fraud, render the contract voidable with respect to that group person insured or person insured.

(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.

320d. Sections 320b and 320c apply *mutatis mutandis* to a failure at the time of reinstatement of a contract to disclose or a misrepresentation at that time, and the period of two years to which reference is made in section 320c commences to run in respect of a reinstatement from the date of reinstatement.

320e. Where a contract contains a general exception or reduction with respect to pre-existing disease or physical conditions and the person insured or group person insured

suffers or has suffered from a disease or physical condition that existed before the date the contract came into force with respect to that person and the disease or physical condition is not by name or specific description excluded from the insurance respecting that person,

- (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 continuously for two years immediately prior to the date of loss incurred or commencement of disability 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 application for the contract.

320f. (1) Subject to subsections (2) and (3), if the age of the person insured has been misstated to the insurer then, at the option of the insurer, either

- (a) the benefits payable under the contract shall be increased or decreased to the amount that would have been provided for the same premium at the correct age, or
- (b) the premium may be adjusted in accordance with the correct age as of the date the person insured became insured.

(2) In the case of a contract of group insurance, if there is a misstatement to the insurer of the age of a group person insured or person insured, the provisions, if any, of the contract with respect to age or misstatement of age shall apply.

(3) Where the age of a person affects the commencement or termination of the insurance, the true age governs.

Beneficiaries

320g. (1) Unless otherwise provided in the policy, an insured may in a contract or by a declaration designate his personal representative or a beneficiary to receive insurance money payable in the event of death by accident, and may from time to time alter or revoke the designation by declaration.

(2) A designation in an instrument purporting to be a will is not ineffective by reason only of the fact that the instrument is invalid as a will or that the designation is invalid as a bequest under the will.

(3) A designation in a will is of no effect against a designation made later than the making of the will.

(4) If a designation is contained in a will and subsequently the will is revoked by operation of law or otherwise, the designation is thereby revoked.

(5) If a designation is contained in an instrument that purports to be a will and subsequently the instrument, if it had been valid as a will would have been revoked by operation of law or otherwise, the designation is thereby revoked.

320h. (1) A designation in favour of the “heirs”, “next of kin” or “estate”, or the use of words of like import in a designation shall be deemed to be a designation of the personal representative.

(2) Where a beneficiary predeceases the person insured or group person insured, as the case may be, and no disposition of the share of the deceased beneficiary in the insurance money is provided in the contract or by declaration, the share is payable

- (a) to the surviving beneficiary, or
- (b) if there is more than one surviving beneficiary, to the surviving beneficiaries in equal shares, or
- (c) if there is no surviving beneficiary, to the insured or group person insured, as the case may be, or his personal representative.

(3) A beneficiary designated under section 320g may upon the death by accident of the person insured or group person insured enforce for his own benefit, and a trustee appointed pursuant to section 320i may enforce as trustee, the payment of insurance money payable to him, and the payment to the beneficiary or trustee discharges the insurer to the extent of the amount paid, but the insurer may set up any defence that it could have set up against the insured or his personal representative.

320i. An insured may in a contract or by a declaration appoint a trustee for a beneficiary, and may alter or revoke the appointment by a declaration.

320j. (1) Until an insurer receives at its head or principal office in Canada an instrument or an order of a court affecting the right to receive insurance money, or a notarial copy or a copy verified by statutory declaration of any such instrument or order, it may make payment of the insurance money and shall be as fully discharged to the extent of the amount paid as if there were no such instrument or order.

(2) Subsection (1) does not affect the rights or interests of any person other than the insurer.

(3) Where an assignee of a contract gives notice in writing of the assignment to the insurer at its head or

principal office in Canada he has priority of interest as against

- (a) any assignee other than one who gave notice earlier in like manner, and
- (b) a beneficiary.

(4) Where a contract is assigned unconditionally and otherwise than as security, the assignee has all the rights and interests given by the contract and by this Part to the insured, and shall be deemed to be the insured.

(5) A provision in a contract to the effect that the rights or interests of the insured, or in the case of a contract of group insurance the group person insured, are not assignable, is valid.

320k. (1) Where a beneficiary is designated, any insurance money payable to him is not, from the time of the happening of the event upon which it becomes payable, part of the estate of the insured, and is not subject to the claims of the creditors of the insured.

(2) While there is in effect a designation of beneficiary in favour of any one or more of a spouse, child, grandchild or a parent of the person insured or group person insured, the rights and interests of the insured in the insurance money and in the contract so far as either relate to accidental death benefits are exempt from execution or seizure.

320l. A group person insured may, in his own name, enforce a right given by a contract to him, or to a person insured thereunder as a person dependent upon or related to him, subject to any defence available to the insurer against him or such person insured or against the insured.

320m. Unless a contract or a declaration otherwise provides, where a person insured or group person insured and a beneficiary die at the same time or in circumstances rendering it uncertain which of them survived the other, the insurance money is payable in accordance with section 320h, subsection (2) as if the beneficiary had predeceased the person insured or group person insured.

320n. (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, or
- (b) the whereabouts of the person entitled are unknown, or
- (c) there is no person capable of giving or authorized to give a valid discharge therefor who is willing to do so,

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

(2) The court may fix 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 it deems just.

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

320o. (1) Where an insurer admits liability for insurance money payable to a minor and 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 from the date of the happening of the event upon which the insurance money becomes payable, pay the money less the applicable costs mentioned in subsection (2) into court to the credit of the minor.

(2) The insurer may retain out of the insurance money for costs incurred upon payment into court under subsection (1), the sum of \$10 where the amount does not exceed \$1,000, and the sum of \$15 in other cases, and payment of the remainder of the money into court discharges the insurer.

(3) No order is necessary for payment into court under subsection (1), but the accountant or other proper officer shall receive the money upon the insurer filing with him an affidavit showing the amount payable and the name, date of birth and residence of the minor, and upon such payment being made the insurer shall forthwith notify the Public Trustee and deliver to him a copy of the affidavit.

320p. Where it appears that a representative of a beneficiary who is under disability may under the law of the domicile of the beneficiary accept payments on behalf of the beneficiary, the insurer may make payment to the representative and any such payment discharges the insurer to the extent of the amount paid.

320q. Notwithstanding that insurance money is payable to a person, the insurer may if the contract so provides, but subject always to the rights of an assignee, pay an amount not exceeding \$2,000 to

- (a) a relative by blood or connection by marriage of person insured or the group person insured, or
- (b) any person appearing to the insurer to be equitably entitled thereto by reason of having incurred e

pense for the maintenance, medical attendance or burial of a person insured or the group person insured, or to have a claim against the estate of a person insured or the group person insured in relation thereto,
and any such payment discharges the insurer to the extent of the amount paid.

320r. (1) Subject to subsection (2), insurance money is payable in Alberta.

(2) In the case of a contract of group insurance, insurance money is payable in the province or territory of Canada in which the group person insured was resident at the time he became insured.

(3) Unless a contract otherwise provides, a reference therein to dollars means Canadian dollars whether the contract by its terms provides for payment in Canada or elsewhere.

(4) Where a person entitled to receive insurance money is not domiciled in Alberta the insurer may pay the insurance money to that person or to any person who is entitled to receive it on his behalf by the law of the domicile of the payee and any such payment discharges the insurer to the extent of the amount paid.

(5) Where insurance money is by the contract payable to a person who has died or to his personal representative and such deceased person was not at the date of his death domiciled in Alberta, the insurer may pay the insurance money to the personal representative of such person appointed under the law of his domicile, and any such payment discharges the insurer to the extent of the amount paid.

320s. Regardless of the place where a contract was made, a claimant who is a resident of Alberta may bring an action in Alberta if the insurer was authorized to transact insurance in Alberta at the time the contract was made or at the time the action is brought.

320t. An insurer does not incur any liability for any default, error or omission in giving or withholding information as to any notice or instrument that it has received and that affects the insurance money.

320u. 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 effect of that provision or statutory condition is to increase the premium or decrease the benefits otherwise provided for in the policy.

320v. Where there has been imperfect compliance with a statutory condition as to any matter or thing to be done or omitted by the insured, person 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.

320w. No officer, agent, employee or servant of the insurer, and no person soliciting insurance, whether or not he is an agent of the insurer shall, to the prejudice of the insured, person insured or group person insured, be deemed to be the agent of the insured or of the person insured or group person insured in respect of any question arising out of the contract.

16. Section 446 is struck out and the following is substituted:

446. Notwithstanding anything in this Act, the Superintendent may issue a licence to a transportation company authorizing it, by its employees in the Province, to act as an agent for a licensed insurer with respect to accident insurance and such other classes of insurance as he approves.

17. Section 456 is amended by striking out subsection (2) and by substituting the following:

(2) Subsection (1) affects neither the payment or allowance by an agent of part of his commission to brokers outside the Province nor the payment of renewal commissions vested by the terms of an agency contract.

18. Schedule A is amended as to item 4, clause (a), subclause (ii) by striking out the word "cities" and by substituting the word "centres".

19. (1) This Act, except sections 7, 8 and 15, comes into force on the day upon which it is assented to.

(2) Sections 7, 8 and 15 come into force on a day or days to be fixed by proclamation.

16. Section 446 presently reads:

446. (1) Notwithstanding any other provision of this Act, any company that is a railway or air line company or that is a public carrier licensed to carry passengers and express freight pursuant to The Public Service Vehicles Act may, upon application to the Superintendent and upon the payment of a fee of \$25, be granted a certificate of authority authorizing that company by its employees in the Province to act as the agent of any licensed insurer in selling insurance against death or injury occasioned by accident to a person who is carried as a passenger by the company or loss or injury to the baggage of such person or loss or injury to any express freight carried by the company.

(2) Every such certificate of authority expires on the 15th day of February of the year following the year in which it was granted unless it is sooner suspended or revoked.

17. Section 456 (1) and (2) read:

456. (1) No insurer licensed under this Act, and no officer, agent or employee of an insurer, and no insurance agent authorized under this Act, shall, directly or indirectly, pay or allow, or offer or agree to pay or allow, any commission or other compensation or anything of value to any person in respect of the effecting or undertaking of insurance in the Province, unless that person holds at the time a subsisting insurance agent's certificate under this Act.

(2) Subsection (1) does not affect the payment or allowance by an agent of part of his commission to brokers outside the Province.

18. Schedule A, 4(a)(ii) presently reads:

4. Fees payable by agents who reside in the Province for certificates of authority:

- (a) to undertake all classes of insurance except life and hail insurance:
 - (i) anywhere in the Province except in cities and towns \$ 5.00
 - (ii) anywhere in the Province except in cities with a population of 5,000 or over\$10.00