

2008 Bill 11

First Session, 27th Legislature, 57 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 11

INSURANCE AMENDMENT ACT, 2008

THE MINISTER OF FINANCE AND ENTERPRISE

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 11

2008

INSURANCE AMENDMENT ACT, 2008

(Assented to , 2008)

HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of Alberta, enacts as follows:

Amends RSA 2000 cl-3

1 The *Insurance Act* is amended by this Act.

2 Section 1(c) is amended by striking out “section 661” and substituting “section 609”.

3 Section 7(c) is amended by striking out “*Immigration Act* (Canada)” and substituting “*Immigration and Refugee Protection Act* (Canada)”.

Explanatory Notes

1 Amends chapter I-3 of the Revised Statutes of Alberta 2000.

2 Section 1(c) presently reads:

1 In this Act,

(c) “agency contract” means a contract between an insurance agent and an insurer in which the insurance agent agrees to act as an insurance agent in respect of insurance issued by the insurer, but does not include the arrangement that an insurance agent has with an insurer that is the service carrier for the Government approved industry plan under section 661;

3 Section 7(c) presently reads:

7 An individual is ordinarily resident in Canada if the individual is

(c) a permanent resident within the meaning of the Immigration Act (Canada) and ordinarily resident in Canada, except a permanent resident who has been ordinarily resident in Canada for more than one year after the time at which the individual first became eligible to apply for Canadian citizenship.

4 Section 12 is repealed.

5 Section 15(1) is amended by striking out “section 626.1” and substituting “section 570”.

6 Section 15.1 is amended

- (a) in subsection (2) by adding “, except section 570,” after “this Act”;**
- (b) in subsection (4) by adding “of the non-accountable entity” after “resources”.**

7 Section 16 is amended by adding the following after clause (c):

4 Section 12 presently reads:

12(1) A contract of insurance is deemed to have been made in Alberta if

- (a) it insures a person who is domiciled or resident in Alberta when the contract is made, or*
- (b) the subject-matter of the contract is property that is or will be located in Alberta.*

(2) Subsection (1) does not apply to a contract of life insurance to which Part 5, Subpart 4 applies.

(3) This section has effect despite any agreement, condition or stipulation to the contrary.

5 Section 15(1) presently reads:

15(1) This Act, except section 626.1, does not apply to a prescribed entity to the extent of its provision to participants of prescribed benefits relating to medical care, accident and sickness benefits.

6 Section 15.1 presently reads in part:

(2) Subject to any regulations made under subsection (3), this Act does not apply to an entity to the extent of its provision to its participants of prescribed benefits whose subject-matter is income replacement due to disability, sickness or disease, provided that no death benefit is payable.

(4) Notwithstanding subsection (3)(b)(v), where a non-accountable entity provides benefits referred to in subsection (2) that are not underwritten by an insurer, it shall disclose to its participants, prior to or at the time that the benefits are offered, that the benefits are not underwritten by an insurer and that the benefits would be payable from the net income, retained earnings or other financial resources.

7 Additional regulation-making authority added.

- (c.1) defining, enlarging or restricting the meaning of any word or phrase used in this Act but not defined in this Act;

8 Section 37 is repealed and the following is substituted:

Scope of insurance

37 An insurer licensed to undertake property insurance may, under a contract falling within Part 5, Subpart 1, insure an automobile against loss or damage.

9 Section 38 is repealed.

10 Section 47(1) is repealed and the following is substituted:

Records to be filed

47(1) Every licensed insurer that carries on in Alberta the business of automobile insurance or any other class of insurance designated by the Minister must prepare and file with the Minister, or with a statistical agency designated by the Minister,

- (a) a record of its premiums and of its loss and expense costs in Alberta, and

8 Section 37 presently reads:

37(1) An insurer licensed to undertake fire insurance may, subject to its instrument of incorporation and any term or condition of its licence, insure or reinsure any property in which the insured has an insurable interest

- (a) against loss or damage by fire, lightning or explosion,*
- (b) against loss or damage from falling aircraft, earthquake, windstorm, tornado, hail, sprinkler leakage, riot, malicious damage, weather, water damage, smoke damage, civil commotion and impact by vehicles, and*
- (c) against any one or more perils falling within any other prescribed classes of insurance.*

(2) An insurer licensed to undertake fire insurance may, under a contract falling within Part 5, Subpart 3, insure an automobile against loss or damage.

9 Section 38 presently reads:

38 An insurer licensed to undertake life insurance may, unless the licence expressly provides otherwise, include disability insurance in any policy of life insurance in respect of the same life or lives insured by the policy.

10 Section 47(1) presently reads:

47(1) Every licensed insurer that carries on in Alberta the business of automobile insurance must prepare and file with the Minister, or with a statistical agency that the Minister may designate, a record of its automobile insurance premiums and of its loss and expense costs in Alberta, in a manner and according to a system of classification that the Minister approves.

- (b) a record of any other information required by the Minister,

in a manner and according to a system of classification that the Minister approves.

11 Section 50(b) is repealed and the following is substituted:

- (b) any information that is required by the Minister for analytical or policy-making purposes.

12 Section 54(1)(d) is amended by striking out “section 531(8) or 657” and substituting “section 511.1(7) or 605”.

13 Section 61 is amended

- (a) **by repealing subsection (1)(b)(ii) and substituting the following:**

- (ii) at the same time pays to the Minister a charge equal to 50% of the premium paid or payable or premium notes given or to be given in connection with the insurance.

- (b) **in subsections (1)(b)(ii) and (2) by striking out “fee” wherever it occurs and substituting “charge”;**

- (c) **by adding the following after subsection (2):**

(2.1) Despite subsection (1)(b)(ii), the Minister may reduce the charge to an amount not less than 10% of the premium paid or payable or premium notes given or to be given in connection with the insurance if the Minister is satisfied that the insurance was not available through a licensed insurer.

11 Section 50 presently reads:

50 A licensed insurer must provide to the Minister, within the time specified by the Minister,

- (a) any information that is required by the Minister to enable the Minister to respond to inquiries on the company's market conduct activities;*
- (b) information for prescribed analytical or policy-making purposes.*

12 Section 54(1)(d) presently reads:

54(1) Where

- (d) a licensed insurer is convicted of an offence under section 531(8) or 657,*

13 Section 61(1) and (2) presently read:

61(1) Despite section 18, an insurer that is not licensed may undertake insurance in Alberta with an insured if

- (a) the insurance is effected without any solicitation whatsoever on the part of that insurer, and*
- (b) the insured, not later than 30 days after signing the contract of insurance or receiving any policy, interim receipt or insuring document issued by or on behalf of the insurer, whichever occurs first,*
 - (i) notifies the Superintendent in writing under oath of the terms of the insurance, the insurer with whom the insurance is placed and the amount of premium paid or payable or premium notes given or to be given in connection with the insurance, and*

14 Section 63 is amended

(a) in subsection (2) by adding “, subject to subsection (2.1),” after “if”;

(b) by adding the following after subsection (2):

(2.1) Subsection (1)(c) and (d) do not apply if

- (a) the special broker is an affiliate of the insurance agent that places the insurance, and
- (b) the insurance is placed outside Alberta.

(ii) *at the same time pays to the Minister of Finance a fee equal to 50% of the premium paid or payable or premium notes given or to be given in connection with the insurance.*

(2) *If the fee referred to in subsection (1)(b)(ii) is not paid within 30 days from the time it becomes payable, a sum equal to 50% of the fee remaining unpaid becomes a penalty that forms a part of the fee and is recoverable with the fee.*

14 Section 63 presently reads:

63(1) Despite section 18, an insurer that is not licensed may undertake insurance in Alberta with an insured if

- (a) the insurance cannot be obtained from licensed insurers,*
- (b) the insurance is effected through a person who holds a valid and subsisting special broker's licence for that class of insurance,*
- (c) before the insurance is undertaken the special broker obtains from the proposed insured a signed and dated document*
 - (i) describing the nature and amount of the insurance required, and*
 - (ii) stating that the insurance cannot be obtained from licensed insurers and specifying the licensed insurers who refused the proposed insured's application,*

and

- (d) before the insurance is undertaken the special broker discloses in writing to the proposed insured that the insurance will be placed with an unlicensed insurer.*

(2) Despite section 18, a person may enter into or renew a contract of insurance to insure a risk in Alberta with an unlicensed insurer if the requirements of subsection (1)(a) to (d) have been met.

(3) This section does not apply to a contract of insurance that may be evidenced by a motor vehicle liability policy.

15 Section 72(1) is amended by adding “on premiums” after “taxes”.

16 Section 80(1)(d)(ii) is amended by striking out “of Finance”.

17 Section 81(b), (c) and (d) are repealed and the following is substituted:

- (b) accident and sickness insurance;
- (c) surety insurance.

18 Section 82(1) is amended by striking out “standard owner’s policy referred to in section 610(6) or a standard garage policy” and substituting “motor vehicle liability policy, except the type of insurance provided in a standard excess automobile policy or standard non-owned automobile policy”.

15 Section 72(1) presently reads:

72(1) In respect of all premiums on insurance effected by a licensed special broker, the special broker must pay to the Minister the taxes that would be payable if the premiums had been received by a licensed insurer, and the payment must accompany the monthly return provided for in section 71.

16 Section 80(1)(d)(ii) presently reads:

80(1) Despite section 79, a person may, with respect to property located in Alberta, exchange a reciprocal contract that is a contract of property insurance and that is part of an unlicensed reciprocal insurance exchange if

- (d) the person who owns the property, within 30 days after signing the contract,*
- (ii) at the same time pays to the Minister of Finance a fee equal to 50% of the premium paid or payable or premium notes given or to be given or mutual liability assumed in connection with the insurance.*

17 Section 81 presently reads:

81 Subject to section 82, a reciprocal insurance exchange may be licensed to undertake any class of insurance that a provincial company may be licensed to undertake except for the following classes:

- (a) life insurance;*
- (b) accident insurance;*
- (c) sickness insurance;*
- (d) guarantee insurance.*

18 Section 82(1) presently reads:

82(1) No reciprocal insurance exchange may be licensed to undertake the type of automobile insurance that is evidenced by a

19 Section 103 is amended by adding “, without the approval of the Superintendent,” after “may”.

20 Section 115 is repealed and the following is substituted:

Debt obligations

115(1) A provincial life company shall not, and shall not permit its prescribed subsidiaries to, enter into a debt obligation or issue any share, other than a common share, if as a result the aggregate of the total debt obligations and the book value of the prescribed shares of the company and its prescribed subsidiaries would exceed 20% of the total assets of the company and its prescribed subsidiaries.

(2) A provincial property and casualty company shall not, and shall not permit its prescribed subsidiaries to, enter into a debt obligation or issue any share, other than a common share, if as a result the aggregate of the total debt obligations and the book value of the prescribed shares of the company and its prescribed subsidiaries would exceed 2% of the total assets of the company and its prescribed subsidiaries.

21 Section 425(2) is repealed and the following is substituted:

(2) A provincial life company that has more than \$15 000 000 of base capital may, with the prior approval of the Minister, make or acquire a commercial loan or acquire control of a body corporate referred to in section 421(3) that holds commercial loans where the aggregate value of all commercial loans held by the company and its subsidiaries would as a result exceed the limit set out in subsection (1).

22 Section 432 is amended by adding the following after clause (f):

standard owner's policy referred to in section 610(6) or a standard garage policy.

19 Section 103 presently reads:

103 No reciprocal insurance exchange may undertake any liability on a reciprocal contract or on any other contract of insurance except on behalf of a subscriber.

20 Section 115 presently reads:

115(1) A provincial life company must not, and must not permit its prescribed subsidiaries to, enter into a debt obligation or issue any share, other than a common share, if as a result the aggregate of the total debt obligations of the company and the book value of its prescribed shares would exceed 20% of the total assets of the company.

(2) A provincial property and casualty company must not, and must not permit its prescribed subsidiaries to, enter into any debt obligation or issue any share, other than a common share, if as a result the aggregate of the total debt obligations of the company and the book value of its prescribed shares would exceed 2% of the total assets of the company.

21 Section 425(2) presently reads:

(2) A provincial life company that has more than \$15 000 000 of base capital may, with the prior approval of the Minister,

(a) make or acquire commercial loans, or

(b) acquire control of a body corporate referred to in section 421(3) that holds commercial loans.

22 Regulation-making authority added.

- (f.1) respecting the protection and maintenance of assets of a provincial company, including regulations respecting the bonding of directors, officers and employees of a provincial company;

23 Section 455(4)(c) is amended by striking out “section 661” and substituting “section 609”.

24 Section 498(n) is amended by striking out “of Finance”.

25 Section 509(1)(c) is repealed and the following is substituted:

- (c) engage in any unfair, coercive or deceptive act or practice,
or

26 Section 511(1) is amended

- (a) in clause (e) by adding “or a contract of accident and sickness insurance” after “life insurance”;**
- (b) by adding the following after clause (g):**
 - (g.1) requiring an insurer to notify a claimant before the expiration of the applicable limitation period in the prescribed circumstances and in the prescribed manner,

23 Section 455(4)(c) presently reads:

(4) An individual who is an employee of an insurer and who holds a valid and subsisting insurance agent's certificate of authority may act as an insurance agent only for

- (c) in the case of automobile insurance, an insurer that is the service carrier for the Government approved industry plan under section 661.*

24 Section 498(n) presently reads:

498 The Lieutenant Governor in Council may make regulations

- (n) respecting the fees, levies, penalties and other charges that are to be paid to insurance councils by insurers, insurance agents or adjusters for any thing an insurance council does under the authority of this Act, respecting the means of enforcing payment of the fees, levies, penalties or other charges and specifying that all, some or none of the fees, levies, penalties or other charges are to be remitted to the Minister of Finance;*

25 Section 509(1)(c) presently reads:

509(1) No insurer, insurance agent or adjuster may

- (c) commit any unfair, coercive or deceptive practice, or*

26 Section 511(1)(e) and (h.1) presently read:

511(1) The Lieutenant Governor in Council may make regulations

- (e) respecting an insured's right to rescind a contract of life insurance and an insurer's obligation to refund premiums if the contract is rescinded;*
- (h.1) respecting the receiving, handling and resolution of complaints, other than complaints referred to in section*

and setting out the consequences and the remedies available to a claimant if an insurer fails to comply with the requirements;

- (g.2) respecting the dispute resolution process established by section 519, including, without limitation, requiring an insurer to notify an insured of the availability of that dispute resolution process in the prescribed circumstances and in the prescribed manner;
- (g.3) respecting the use of telephonic communications or other means of communication that do not automatically generate a verbatim record of the communications, including, without limitation, regulations
 - (i) requiring that such communications be concurrently recorded,
 - (ii) requiring that copies, including transcripts, of records made under subclause (i) be provided to the insured or a claimant under a contract, and
 - (iii) excluding the use of such communications in relation to specified records under this Act or a regulation under this Act;

(c) in clause (h.1)

- (i) **by striking out** “, other than complaints referred to in section 661.3,”;

(ii) by adding the following after subclause (v):

- (v.1) requiring an insurer to be a member of a prescribed organization for the purpose of dealing with complaints;

(d) by adding the following after clause (h.1):

- (h.2) respecting the administration of group insurance and creditor’s group insurance in respect of life insurance under Part 5, Subpart 5 and accident and sickness insurance under Part 5, Subpart 6, including, without limitation, regulations

*661.3, by persons against insurers, including, without
limitation, regulations*

- (i) respecting the amount and disclosure of compensation payable to an administrator of a group insurance contract or a creditor's group insurance contract;
- (ii) respecting the duties and conduct of an administrator of a group insurance contract or a creditor's group insurance contract;

27 The following is added after section 511:

Insurance as collateral security

511.1(1) No mortgagee shall accept or receive either directly or through the mortgagee's agent or employee, and no officer or employee of a mortgagee shall accept or receive, any commission or other remuneration or benefit in consideration of effecting a contract or renewal of a contract under which contract loss, if any, is payable to the mortgagee.

(2) No insurer or insurance agent shall pay, allow or give any commission or other remuneration or benefit to a mortgagee or to any person in the employ of or on behalf of a mortgagee in consideration of effecting a contract or renewal of a contract under which contract loss, if any, is payable to the mortgagee.

(3) Subsections (1) and (2) do not apply to an insurer that pays, allows or gives any commission or other remuneration or benefit to a mortgagee or to any person in the employ of or on behalf of a mortgagee in respect of a contract if the mortgagee is a deposit-taking institution that holds a restricted insurance agent's certificate of authority and the contract falls within one or more of the classes or types of insurance specified by the Minister under section 454(2).

(4) An insurer or other person who contravenes this section is guilty of an offence.

(5) No person who engages in the business of lending money, in this section called a "money-lender", and who owns an insurance agency or has any interest in or connection with an insurance agency shall require as a condition of the making of any loan that the borrower must

27 Life insurance policies.

- (a) cancel any subsisting contract issued by an insurer licensed to issue that type of policy under this Act, and
- (b) take out other insurance through the money-lender or through any insurance agency owned by the money-lender or in or with which the money-lender has any interest or connection.

(6) No trust corporation shall cancel any subsisting contract that is issued by an insurer licensed to issue that type of contract under this Act that is issued in respect of any property for which the trust corporation is a trustee, unless the necessity for the continuation of the insurance does not exist and no other insurance of a similar description is taken out in respect of the property during the original term of the first-mentioned insurance.

(7) A money-lender who contravenes subsection (5), a trust corporation that contravenes subsection (6), an insurance agent who knowingly accepts any proposal for any insurance taken out in contravention of subsection (5) or (6) and an insurer that issues any contract with actual or constructive notice that it has been negotiated in contravention of subsection (5) or (6) are guilty of an offence.

Life insurance policies

511.2(1) In this section, “variable life insurance policy” means a life insurance policy for which all or part of the insurer’s liability under the policy, and the reserves for the liability, vary in amount depending on the market value of a specific group of assets.

(2) The Lieutenant Governor in Council may make regulations respecting life insurance policies, including variable life insurance policies, including, without limitation, regulations

- (a) providing for the form and contents, or either, of
 - (i) a life insurance policy,
 - (ii) an application for a life insurance policy,
 - (iii) an endorsement or rider to a life insurance policy,

- (iv) any advertising material in respect of a life insurance policy, or
- (v) an information folder issued or used by an insurer;
- (b) requiring an insurer to file with the Superintendent or an industry body designated by the Superintendent the form of any life insurance policy and other materials required by the regulations before the insurer may issue a life insurance policy;
- (c) requiring an insurer to deliver or otherwise provide to an applicant for a life insurance policy any information or materials required by the regulations.

28 Part 5 is repealed and the following is substituted:

Part 5 Insurance Contracts

Subpart 1 General Insurance Provisions

Definition

512 In this Subpart, “contract” means a contract of insurance.

Application of Subpart

513 Subject to sections 638 and 696 and except as otherwise provided, the provisions of this Subpart, where not inconsistent with other provisions of this Act, apply to every contract made in Alberta other than a contract of

- (a) life insurance,
- (b) accident and sickness insurance, or
- (c) reinsurance.

Contract made in Alberta

514(1) A contract is deemed to have been made in Alberta if

- (a) it insures a person who is domiciled or resident in Alberta when the contract is made, or

28 Repeal and replacement of Part 5 respecting insurance contracts.

- (b) the subject-matter of the contract is property that is or will be located in Alberta.

(2) This section has effect despite any agreement, condition or stipulation to the contrary.

Contract must be consistent with Act

515(1) No insurer shall make a contract that is inconsistent with this Act.

(2) An action or omission of an insurer resulting in imperfect compliance with this Act does not render a contract invalid insofar as it benefits an insured.

Terms, etc., of contract

516(1) All the terms and conditions of a contract must be set out in full in the policy or in writing securely attached to it when it is issued, and unless so set out no term of the contract or condition, stipulation, warranty or proviso modifying or impairing its effect is valid or admissible in evidence to the prejudice of the insured or a person to whom insurance money is payable under the contract.

(2) Subsection (1) does not apply to an alteration or modification of the contract agreed on in writing by the insurer and the insured after the policy is issued.

(3) Every policy must contain the following:

- (a) the name of the insurer;
- (b) the name of the insured;
- (c) the name of the person to whom the insurance money is payable;
- (d) the amount or the method of determining the amount of the premium for the insurance;
- (e) the subject-matter of the insurance;
- (f) the indemnity for which the insurer may become liable;
- (g) the event on the happening of which the liability is to accrue;

- (h) the date the insurance takes effect;
- (i) the date the insurance terminates or the method by which that date is established;
- (j) the following statement:

Every action or proceeding against an insurer for the recovery of insurance money payable under the contract is absolutely barred unless commenced within the time set out in the *Insurance Act*.

(4) Subsection (3) does not apply to contracts of surety insurance or hail insurance.

(5) When a contract, whether it does or does not provide for its renewal, is renewed by a renewal receipt, it is a sufficient compliance with subsection (1) if the terms and conditions of the contract were set out as required by that subsection and the renewal receipt identifies the contract by its number or date.

(6) The application or proposal for insurance must not, as against the insured, be deemed to be a part of or be considered with a contract except insofar as the Court determines that it contains a material misrepresentation by which the insurer was induced to enter into the contract, the proof of which rests with the insurer.

(7) No contract may contain or have endorsed on it, or be made subject to, any term, condition, stipulation, warranty or proviso providing that the contract is avoided by reason of any statement in the application or proposal for the insurance inducing the insurer to enter into the contract, unless the term, condition, stipulation, warranty or proviso is limited to cases in which the statement is material to the contract, and no contract may be avoided by reason of the inaccuracy of any such statement unless it is material to the contract.

(8) The question of materiality in any contract is a question of fact, and no admission, term, condition, stipulation, warranty or proviso to the contrary contained in the application or proposal for insurance or in the policy or in any agreement or document relating to the contract has any force or validity.

(9) Nothing in this section impairs the effect of any statutory condition required by this Act to be part of any contract, or of any express provision of this Act.

(10) This section does not apply to contracts of automobile insurance.

Contents of contract

517(1) Subject to subsection (2), before a policy is issued in respect of a contract, the contract is deemed to include

- (a) the usual terms and conditions contained in the insurer's standard policy for the type of insurance concerned, and
- (b) any other terms and conditions of which the insured is given notice in writing as to their existence and contents.

(2) Unless the insured has been given notice in writing of the existence and contents of a term or condition, the term or condition does not apply to a contract described in subsection (1) if the insured is not reasonably able to comply with it in the absence of the notice.

(3) This section does not apply to contracts of automobile insurance.

Policy in accordance with terms of application or proposal

518(1) A policy issued to an insured on an application or proposal is deemed to be in accordance with the terms of the application or proposal unless the insurer immediately gives notice to the insured in writing of the particulars in which the policy and the application or proposal differ, in which case the insured may, within 2 weeks after receiving the notice, reject the policy.

(2) If the insured rejects the policy under subsection (1), the insurer must refund as soon as practicable the excess of premium actually paid by the insured over the prorated premium for the expired time, but in no event may the prorated premium for the expired time be less than any minimum retained premium specified in the policy.

(3) Despite subsection (2), if the insured failed to disclose material information on the application or proposal the knowledge of which would have resulted in the insurer charging a higher premium than

what was charged, the amount that the insurer is required to refund under subsection (2) is the excess of premium actually paid by the insured over the short rate premium for the expired time calculated as if the higher premium had been charged.

(4) If the insured does not reject the policy under subsection (1), the insured is deemed to have accepted the policy.

Dispute resolution

519(1) In this section, “representative” means a dispute resolution representative appointed under subsection (5).

(2) This section applies to disputes between an insurer and an insured about a matter that under Statutory Condition 11 set out in section 540 or another condition of the contract must be determined using this dispute resolution process.

(3) This section does not apply to a contract of hail insurance.

(4) Either the insured or the insurer may demand in writing the other’s participation in a dispute resolution process after proof of loss has been delivered to the insurer.

(5) Within 7 days after receiving or giving a demand under subsection (4), the insured and the insurer must each appoint a dispute resolution representative, and within 15 days after their appointment, the 2 representatives must appoint an umpire.

(6) A person may not be appointed as a representative if the person is

- (a) the insured or the insurer, or
- (b) an employee of the insured or the insurer.

(7) The representatives must determine the matters in dispute by agreement and, if they fail to agree, submit their differences to the umpire, and the written determination of any 2 of them determines the matters.

(8) Each party to the dispute resolution process must pay the representative whom the party appointed, and each party must bear equally the expense of the dispute resolution process and the umpire.

(9) If

- (a) a party to a dispute resolution process fails to appoint a representative in accordance with subsection (5), or
- (b) a representative fails or refuses to act or is incapable of acting and the party that appointed that representative has not appointed another representative within 7 days after the failure, refusal or incapacity,

on application of the insurer or the insured on 2 days' notice to the other, the Court may appoint a representative.

(10) On an application under subsection (9), the Court may award costs on a solicitor and client basis against the person whose representative is appointed by the Court, whether or not that person appeared on the application.

(11) If

- (a) the representatives fail to appoint an umpire in accordance with subsection (5), or
- (b) the umpire fails or refuses to act or is incapable of acting,

either representative may make an application to the Superintendent for the appointment of an umpire, containing

- (c) the names of 3 persons the applicant believes are capable of performing the functions of the umpire, and
- (d) the credentials of the 3 persons.

(12) Before making an application under subsection (11), the applicant must give notice in writing to the other representative of the intention to make the application, which notice must contain the names and credentials the applicant is submitting to the Superintendent under subsection (11).

(13) An application under subsection (11) must be accompanied with a copy of the notice, and the date it was given, under subsection (12).

(14) Within 15 days after receiving a notice under subsection (12), the other representative may give the Superintendent and the applicant

- (a) the names of 3 persons the representative believes are capable of performing the functions of the umpire, and
- (b) the credentials of the 3 persons.

(15) The Superintendent must appoint an umpire from the names submitted under subsection (11) or (14) as soon as practicable after the earlier of the following occurs:

- (a) the Superintendent receives names and credentials under subsection (14);
- (b) the period for providing names and credentials under subsection (14) expires.

(16) An umpire is bound by the rules of procedural fairness in carrying out the umpire's functions under this section.

Relief from forfeiture

520 If the Court considers it inequitable that there has been a forfeiture or avoidance of insurance, in whole or in part, on the ground that there has been imperfect compliance with

- (a) a statutory condition, or
- (b) a condition or term of a contract

as to the proof of loss to be given by the insured or the claimant or another matter or thing done or omitted to be done by the insured or the claimant with respect to the loss, the Court may relieve against the forfeiture or avoidance on any terms it considers just.

Waiver and estoppel

521(1) The obligation of an insured to comply with a requirement under a contract is excused to the extent that

- (a) the insurer has given notice in writing that the insured's compliance with the requirement is excused in whole or in part, subject to the terms specified in the notice, if any, or

- (b) the insurer's conduct reasonably causes the insured to believe that the insured's compliance with the requirement is excused in whole or in part, and the insured acts on that belief to the insured's detriment.

(2) Neither the insurer nor the insured is deemed to have waived any term or condition of a contract by reason only of

- (a) the insurer's or insured's participation in a dispute resolution process under section 519,
- (b) the delivery and completion of a proof of loss, or
- (c) the investigation or adjustment of any claim under the contract.

Effect of delivery of policy

522(1) When a policy has been delivered, the contract is as binding on the insurer as if the premium had been paid, although

- (a) the premium has not in fact been paid, and
- (b) the policy was delivered by an officer or agent of the insurer who had no authority to deliver it.

(2) If a premium has not been paid, the insurer may do one or both of the following:

- (a) sue for any unpaid premium;
- (b) if there is a claim under the contract, deduct the amount of the unpaid premium from the amount for which the insurer is liable under the contract.

(3) If

- (a) a cheque, bill of exchange, promissory note or other written promise to pay is given for the whole or part of any premium, whether for an original contract or for a renewal of a contract, and
- (b) the cheque, bill of exchange, promissory note or other written promise to pay is not honoured according to its tenor,

the insurer may terminate the contract in accordance with any statutory or policy condition or, if there is no relevant statutory or policy condition, by giving notice by registered mail.

Insurer to furnish forms

523(1) An insurer, immediately on receipt of a request, and in any event not later than 60 days after receipt of notice of loss, must furnish to the insured or the person to whom the insurance money is payable forms on which to make the proof of loss required under the contract.

(2) An insurer that neglects or refuses to comply with subsection (1) is guilty of an offence and, in addition, section 524 is 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.

(3) If the insurer has, within 30 days after notification of loss, adjusted the loss acceptably to the person to whom the insurance money is payable, the insurer is deemed to have complied with this section.

(4) An insurer by reason only of furnishing forms to make the proof of loss is not to 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.

When action may be brought

524 No action lies for the recovery of money payable under a contract until the expiration of 60 days, or of any shorter period fixed by the contract, after proof, in accordance with the provisions of the contract,

- (a) of the loss, or
- (b) of the happening of the event on which the insurance money is to become payable.

Consolidation of actions

525(1) If several actions are brought for the recovery of money payable under one or more contracts, the Court may consolidate or otherwise deal with them so that there is only one action for and in respect of all the claims made in the actions.

(2) If an action is brought to recover the share of money payable under a contract to one or more minors, all the other minors entitled, or the trustees, executors or guardians entitled to receive payment of the shares of the other minors, must be made parties to the action, and the rights of all the minors must be determined in one action.

(3) In all actions where several persons are interested in the money payable under a contract, the Court may apportion any sum directed to be paid among the persons entitled to the insurance money, and may give all necessary directions and relief.

Limitation of actions

526(1) An action or proceeding against an insurer under a contract must be commenced

- (a) in the case of loss or damage to insured property, not later than 2 years after the date the insured knew or ought to have known that the loss or damage occurred, and
- (b) in any other case, not later than 2 years after the date that the cause of action against the insurer arose.

(2) This section does not apply to contracts of automobile insurance and hail insurance.

Application of Limitations Act

527 Section 5 of the *Limitations Act* applies to a limitation period established in this Act in respect of an action or proceeding on a contract as if the period were established under the *Limitations Act*.

Payment of insurance money

528 Insurance money is payable in Alberta in lawful money of Canada.

Payment to payee domiciled or resident abroad

529 If a person entitled to receive money payable under a contract, except insurance of the person, is domiciled or resides in a foreign jurisdiction and payment valid according to the law of the foreign jurisdiction is made to the person, the payment is valid and effectual for all purposes.

Notice

530(1) Subject to any statutory condition and subsection (2), if the method of giving notice is not otherwise expressly provided for, any notice given by an insurer for any of the purposes of this Act may, in the case of an insured, be given by mailing it to the postal address given in the insured's original application or proposal for insurance or otherwise notified in writing to the insurer.

(2) Notices given or sent by provincial companies to policyholders must be given or sent in accordance with section 228.

(3) Subject to any statutory condition, if the method of delivering the notice is not otherwise expressly provided for, any notice to be given to an insurer for any of the purposes of this Act may be given by

- (a) delivering it to the chief agency of the insurer in the province,
- (b) sending it by registered mail addressed to the insurer or its manager or agent at that chief agency, or
- (c) sending it to the authorized agent of the insurer in any manner.

Furnishing of copy to insured

531(1) An insurer must on request furnish to the insured a copy of

- (a) the insured's application or proposal for insurance, and
- (b) the insured's policy.

(2) An insurer must furnish the first copy of the policy free of charge, but may charge a reasonable fee to cover its expenses in furnishing any additional copies.

Insurance against loss through negligence

532 It is lawful for an insurer to contract to indemnify an insured for financial loss occasioned by reason of liability to a third person, whether or not the loss is caused by the insured through negligence or while contravening any municipal or Metis settlement bylaw or any Act of the Legislature.

Claim for indemnity

533(1) In this section, “contract of insurance” includes insurance undertaken by an insurer as part of life insurance whereby the insurer undertakes to pay insurance money or to provide other benefits in the event the person whose life is insured becomes disabled as a result of bodily injury or disease.

(2) Unless a contract of insurance provides otherwise, a contravention of any criminal or other law in force in Alberta or elsewhere does not render unenforceable a claim for indemnity under a contract of insurance except when the contravention is committed by the insured, or by another person with the consent of the insured, with intent to bring about loss or damage.

Execution against insured unsatisfied

534(1) In any case in which a person insured against liability for injury or damage to persons or property of others has failed to satisfy a judgment obtained by a claimant for the injury or damage and a writ of enforcement against the insured in respect of the judgment is returned unsatisfied, the enforcement creditor has a right of action against the insurer to recover an amount, not exceeding the amount of insurance under the policy or the amount of the judgment, in the same manner and subject to the same equities as the insured would have if the judgment had been satisfied.

(2) This section does not apply to contracts of motor vehicle liability insurance.

Assignment of premium refund

535(1) If an insured assigns the right to a refund of premium that may accrue by reason of the cancellation or termination of a contract under the terms of the contract and notice of the assignment is given by the assignee to the insurer, the insurer must pay any refund to the assignee despite any provision in this Act or condition in the contract, whether established under this Act or not, requiring the refund to be paid to the insured or to accompany any notice of cancellation or termination to the insured.

(2) If the condition in a contract dealing with cancellation or termination by the insurer provides that the refund must accompany the notice of cancellation or termination, the insurer must include in the notice a statement that, instead of payment of the refund in

accordance with the condition, the refund is being paid to the assignee under this section.

Payment into Court by insurer

536(1) If an insurer cannot obtain sufficient discharge for insurance money for which it admits liability, the insurer may apply to the Court ex parte for an order for the payment of the insurance money into Court, and the Court may order the payment into Court to be made on any terms as to costs and otherwise that the Court directs, and may provide to what fund or name the amount is to be credited.

(2) The receipt of the clerk or other proper officer of the Court is sufficient discharge to the insurer for the insurance money paid into Court, and the insurance money must be dealt with in accordance with an order of the Court.

Filing of copy of policy, etc., with Superintendent

537 The Superintendent may require an insurer to file with the Superintendent a copy of any form of policy or of the form of application for any contract or of any endorsement or rider or advertising material issued or used by the insurer.

Title insurance

538 A contract of title insurance must be in writing and in addition to the other requirements established by this Act must expressly limit the liability of the insurer to a sum stated in the contract.

Mortgagees and other payees

539(1) When a loss under a contract has, with the consent of the insurer, been made payable to a person other than the insured, the insurer shall not cancel or alter the contract to the prejudice of that person without notice to that person.

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

Statutory conditions

540(1) Subject to subsections (2) and (3),

- (a) the conditions set out in this section are deemed to be part of every contract in force in Alberta and must be printed on every policy under the heading “Statutory Conditions”, and
- (b) no variation or omission of or addition to any statutory condition is binding on the insured.

(2) This section does not apply to contracts of automobile insurance, hail insurance, surety insurance or any other class of insurance prescribed in the regulations.

(3) Statutory Conditions 1 and 6 to 13 apply only to, and need only be printed on, contracts that include insurance against loss or damage to property.

(4) In this section, “policy” does not include an interim receipt or a binder.

Statutory Conditions

MISREPRESENTATION 1 If a person applying for insurance falsely describes the property to the prejudice of the insurer, or misrepresents or fraudulently omits to communicate any circumstance that is material to be made known to the insurer in order to enable it to judge the risk to be undertaken, the contract is void as to any property in relation to which the misrepresentation or omission is material.

PROPERTY OF OTHERS 2 The insurer is not liable for loss or damage to property owned by a person other than the insured unless

- (a) otherwise specifically stated in the contract, or
- (b) the interest of the insured in that property is stated in the contract.

CHANGE OF INTEREST 3 The insurer is liable for loss or damage occurring after an authorized assignment under the *Bankruptcy and Insolvency Act* (Canada) or a change of title by succession, by operation of law or by death.

MATERIAL CHANGE IN RISK 4(1) The insured must promptly give notice in writing to the insurer or its agent of a change that is

- (a) material to the risk, and
- (b) within the control and knowledge of the insured.

(2) If an insurer or its agent is not promptly notified of a change under subparagraph (1) of this condition, the contract is void as to the part affected by the change.

(3) If an insurer or its agent is notified of a change under subparagraph (1) of this condition, the insurer may

- (a) terminate the contract in accordance with Statutory Condition 5, or
- (b) notify the insured in writing that, if the insured desires the contract to continue in force, the insured must, within 15 days after receipt of the notice, pay to the insurer an additional premium specified in the notice.

(4) If the insured fails to pay an additional premium when required to do so under subparagraph (3)(b) of this condition, the contract is terminated at that time and Statutory Condition 5(2)(a) applies in respect of the unearned portion of the premium.

TERMINATION OF INSURANCE 5(1) The contract may be terminated

- (a) by the insurer giving to the insured 15 days' notice of termination by registered mail or 5 days' written notice of termination personally delivered, or
- (b) by the insured at any time on request.

(2) If the contract is terminated by the insurer,

- (a) the insurer must refund the excess of premium actually paid by the insured over the prorated premium for the expired time, but in no event may the prorated premium for the expired time be less than any minimum retained premium specified in the contract, and

- (b) the refund must accompany the notice unless the premium is subject to adjustment or determination as to amount, in which case the refund must be made as soon as practicable.

(3) If the contract is terminated by the insured, the insurer must refund as soon as practicable the excess of premium actually paid by the insured over the short rate premium for the expired time specified in the contract, but in no event may the short rate premium for the expired time be less than any minimum retained premium specified in the contract.

(4) The 15-day period referred to in subparagraph (1)(a) of this condition starts to run on the day the registered letter or notification of it is delivered to the insured's postal address.

REQUIREMENTS AFTER LOSS 6(1) On the happening of any loss or damage to insured property, the insured must, if the loss or damage is covered by the contract, in addition to observing the requirements of Statutory Condition 9,

- (a) immediately give notice in writing to the insurer,
- (b) deliver as soon as practicable to the insurer a proof of loss in respect of the loss or damage to the insured property verified by statutory declaration
 - (i) giving a complete inventory of that property and showing in detail quantities and costs of that property and particulars of the amount of loss claimed,
 - (ii) stating when and how the loss occurred, and if caused by fire or explosion due to ignition, how the fire or explosion originated, so far as the insured knows or believes,
 - (iii) stating that the loss did not occur through any wilful act or neglect or the procurement, means or connivance of the insured,
 - (iv) stating the amount of other insurances and the names of other insurers,
 - (v) stating the interest of the insured and of all others in that property with particulars of all liens, encumbrances and other charges on that property,

- (vi) stating any changes in title, use, occupation, location, possession or exposure of the property since the contract was issued, and
- (vii) stating the place where the insured property was at the time of loss,
- (c) if required by the insurer, give a complete inventory of undamaged property showing in detail quantities and cost of that property, and
- (d) if required by the insurer and if practicable,
 - (i) produce books of account and inventory lists,
 - (ii) furnish invoices and other vouchers verified by statutory declaration, and
 - (iii) furnish a copy of the written portion of any other relevant contract.

(2) The evidence given, produced or furnished under subparagraph (1)(c) and (d) of this condition must not be considered proofs of loss within the meaning of Statutory Conditions 12 and 13.

FRAUD 7 Any fraud or wilfully false statement in a statutory declaration in relation to the particulars required under Statutory Condition 6 invalidates the claim of the person who made the declaration.

WHO MAY GIVE NOTICE AND PROOF 8 Notice of loss under Statutory Condition 6(1)(a) may be given and the proof of loss under Statutory Condition 6(1)(b) may be made

- (a) by the agent of the insured if
 - (i) the insured is absent or unable to give the notice or make the proof, and
 - (ii) the absence or inability is satisfactorily accounted for,

or

- (b) by a person to whom any part of the insurance money is payable, if the insured refuses to do so, or in the circumstances described in clause (a) of this condition.

SALVAGE 9(1) In the event of loss or damage to insured property, the insured must take all reasonable steps to prevent further loss or damage to that property and to prevent loss or damage to other property insured under the contract, including, if necessary, removing the property to prevent loss or damage or further loss or damage to the property.

(2) The insurer must contribute on a prorated basis towards any reasonable and proper expenses in connection with steps taken by the insured under subparagraph (1) of this condition.

ENTRY, CONTROL, ABANDONMENT 10 After loss or damage to insured property, the insurer has

- (a) an immediate right of access and entry by accredited representatives sufficient to enable them to survey and examine the property, and to make an estimate of the loss or damage, and
- (b) after the insured has secured the property, a further right of access and entry by accredited representatives sufficient to enable them to appraise or estimate the loss or damage, but
 - (i) without the insured's consent, the insurer is not entitled to the control or possession of the insured property, and
 - (ii) without the insurer's consent, there can be no abandonment to it of the insured property.

IN CASE OF DISAGREEMENT 11(1) In the event of disagreement as to the value of the insured property, the value of the property saved, the nature and extent of the repairs or replacements required or, if made, their adequacy, or the amount of the loss or damage, those questions must be determined using the applicable dispute resolution process set out in the *Insurance Act* whether or not the insured's right to recover under the contract is disputed, and independently of all other questions.

(2) There is no right to a dispute resolution process under this condition until

- (a) a specific demand is made for it in writing, and
- (b) the proof of loss has been delivered to the insurer.

WHEN LOSS PAYABLE 12 Unless the contract provides for a shorter period, the loss is payable within 60 days after the proof of loss is completed in accordance with Statutory Condition 6 and delivered to the insurer.

REPAIR OR REPLACEMENT 13(1) Unless a dispute resolution process has been initiated, the insurer, instead of making payment, may repair, rebuild or replace the insured property lost or damaged, on giving written notice of its intention to do so within 30 days after receiving the proof of loss.

(2) If the insurer gives notice under subparagraph (1) of this condition, the insurer must begin to repair, rebuild or replace the property within 45 days after receiving the proof of loss and must proceed with all due diligence to complete the work within a reasonable time.

NOTICE 14(1) 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.

(2) Written notice to the insured may be personally delivered at, or sent by registered mail addressed to, the insured's last known address as provided to the insurer by the insured.

Recovery by innocent persons

541(1) If a contract contains a term or condition excluding coverage for loss or damage to property caused by a criminal or intentional act or omission of an insured or any other person, the exclusion applies only to the claim of a person

- (a) whose act or omission caused the loss or damage,
- (b) who abetted or colluded in the act or omission,
- (c) who
 - (i) consented to the act or omission, and
 - (ii) knew or ought to have known that the act or omission would cause the loss or damage,

or

(d) who is in a class prescribed by regulation.

(2) Nothing in subsection (1) allows a person whose property is insured under the contract to recover more than the person's proportionate interest in the lost or damaged property.

(3) A person whose coverage under a contract would be excluded but for subsection (1) must comply with the requirements prescribed in the regulations.

Premium notes — mutual insurance

542(1) An insurer may accept a premium note of the insured for insurance and may undertake contracts in consideration of the premium note.

(2) When a premium note is assessable for the losses, expenses and reserve of the insurer, all terms and conditions respecting the premium note must be included in the policy.

Limitation of liability clause

543 When a contract evidenced by a policy contains

- (a) a deductible clause,
- (b) a co-insurance, average or similar clause, or
- (c) a conditional or unconditional clause limiting recovery by the insured to a specific percentage of the value of any property insured at the time of loss,

the contract must have printed or stamped on the first page in conspicuous bold type the words:

This policy contains a clause which may limit the amount payable.

and unless these words are so printed or stamped, the clause is not binding on the insured.

Rateable contributions

544(1) If, on the happening of loss or damage, there is in force more than one contract covering the loss or damage, the insurers under the respective contracts are each liable to the insured for their

rateable proportion of the loss, unless it is otherwise expressly agreed in writing between the insurers.

(2) For the purpose of subsection (1), a contract is deemed to be in force despite any term or condition of it that the contract does not cover, attach, come into force or become insurance until after full or partial payment of any loss under any other contract.

(3) Nothing in subsection (1) affects the validity of any division of the sum insured into separate items, any limits of insurance on specified property, any clause referred to in section 543 or any contract condition limiting or prohibiting having or placing other insurance.

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

- (a) if one contract contains a deductible clause, the prorated proportions of the insurer under that contract must be first ascertained without regard to the deductible clause and then the clause must be applied only to affect the amount of recovery under that contract, and
- (b) if more than one contract contains a deductible clause, the prorated proportions of the insurers under those contracts must be first ascertained without regard to the deductible clauses and then the highest deductible must be prorated among the insurers with deductible clauses, and those prorated amounts affect the amount of recovery under those contracts.

(5) Nothing in subsection (4) may be construed to have the effect of increasing the prorated contributions of an insurer under a contract that is not subject to a deductible clause.

(6) Despite subsection (1), insurance on identified articles is a first loss insurance as against all other insurance.

(7) This section does not apply to a subscription contract issued by 2 or more insurers.

Special stipulations

545(1) If a contract contains a stipulation, condition, term, proviso or warranty, other than a prescribed exclusion referred to in subsection (3)(a), that is or may be material to the risk, including,

but not restricted to, a provision in respect of the use, condition, location or maintenance of the insured property, the stipulation, condition, term, proviso or warranty is not binding on the insured if it is held to be unjust or unreasonable by the Court before which a question relating to it is tried.

(2) Instead of proceeding under Statutory Condition 11 set out in section 540, an insurer and an insured may agree in writing to make a joint survey, examination, estimate or appraisal of the loss or damage, in which case the insurer is deemed to have waived its right to make a separate survey, examination, estimate or appraisal of the loss or damage.

(3) No insurer may provide in a contract that includes coverage for loss or damage by fire or by another prescribed peril an exclusion relating to

- (a) the cause of the fire or other prescribed peril other than a prescribed exclusion, or
- (b) the circumstances of the fire or peril if those circumstances are prescribed.

(4) An exclusion in a contract contrary to subsection (3) is invalid.

(5) For greater certainty, subsection (3) applies in relation to loss or damage by fire however the fire is caused and in whatever circumstances and whether the coverage is under a part of a contract specifically covering loss or damage by fire or under another part.

Subrogation of insurer to rights of recovery

546(1) Subject to section 570(6), an insurer that makes any payment or assumes liability for making any payment under a contract is subrogated to all rights of recovery of the insured against any person and may bring an action in the name of the insured to enforce those rights.

(2) When the net amount recovered by an 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 must be divided between the insurer and the insured in the proportion in which the loss or damage has been borne by them.

(3) When the interest of an insured in any recovery is limited to the amount provided under a deductible or co-insurance clause, the insurer has control of the action.

(4) When the interest of an insured in any recovery exceeds that referred to in subsection (3) 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,
- (b) the conduct and carriage of the action or any related matters,
- (c) any offer of settlement or the apportionment of an offer of settlement, whether an action has been commenced or not,
- (d) the acceptance or the apportionment of any money paid into Court,
- (e) the apportionment of costs, or
- (f) the launching or prosecution of an appeal,

either party may apply to the Court for the determination of the matters in question, and the Court may make any order 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 on the application are the insured and the insurer, and no material or evidence used or taken on the application is admissible on 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 unless they have concurred in the settlement or release.

Electronic communications

547(1) In this section and section 548, a reference to “this Act” includes the regulations made under this Act.

(2) If under this Act a record is required or permitted to be provided to a person personally, by mail or by any other means,

unless regulations referred to in subsection (4) or under section 511(1)(g.3) provide otherwise, the record may be provided to the person in electronic form in accordance with the *Electronic Transactions Act*.

(3) For the purposes of time periods under this Act, a record provided in electronic form is deemed to have been sent by registered mail to the address required under this Act.

(4) The *Electronic Transactions Act* and subsection (2) do not apply to a record under, or in relation to a provision of, this Act that is excluded from their application by regulation.

Regulations

548 The Lieutenant Governor in Council may make regulations

- (a) prescribing any matter that is required or permitted to be prescribed under this Subpart;
- (b) excluding a record under or a provision of this Act from the application of the *Electronic Transactions Act* and section 547(2).

Subpart 2 Automobile Insurance

Definitions

549 In this Subpart,

- (a) “accident” means an accident arising from the use or operation of an automobile;
- (b) “accident claim” means a claim for loss or damages from bodily injury or death arising from an accident;
- (c) “basic coverage” means insurance coverage required or provided for under sections 571 and 573;
- (d) “contract” means a contract of automobile insurance;

- (e) “insured” means a person insured by a contract whether named in the contract or not and includes any person who is stated in a contract to be entitled to benefits payable under the insurance mentioned in section 573 whether described in the contract as an insured person or not.

Application of Subpart

550(1) This Subpart applies to contracts providing automobile insurance made or renewed in Alberta on or after January 1, 1969.

(2) This Subpart 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 on an automobile, or
- (c) liability for loss of or damage to property carried in or on an automobile.

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

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

Approval of Forms

Approval of forms

551(1) No insurer may 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 that additional information does not constitute part of the application for the purposes of section 554.

(3) When, in the opinion of the Superintendent, any provision of this Subpart, 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, the Superintendent may approve a form of policy, or part of a form of policy, or a form of 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 endorsement in the form so approved is effective and binding according to its terms even if those terms are inconsistent with, vary, omit or add to any provision or statutory condition of this Subpart.

(4) Except as to matters mentioned in section 566, the Superintendent may, if the Superintendent considers it to be in the public interest, approve a form of motor vehicle liability policy or endorsement to a motor vehicle liability policy that extends the insurance beyond that required by this Subpart.

(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 approve a form of owner's policy containing insuring agreements and provisions in conformity with this Subpart for use by insurers in general, which, for the purposes of section 553, is the standard owner's policy.

(7) When the Superintendent approves a form referred to in subsection (6), the Superintendent must cause a copy of the form to be published in The Alberta Gazette, but it is not necessary for the Superintendent to publish endorsement forms approved for use with the standard owner's policy.

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

(9) The Superintendent must, on request of any interested insurer, specify in writing the Superintendent's reasons for granting, refusing or revoking an approval of a form.

(10) The Superintendent may at any time approve an amendment to any form that was previously approved by the Superintendent

under this section, and where the Superintendent does so, the Superintendent must have a copy of the amendment published in The Alberta Gazette, but it is not necessary for the Superintendent to publish an amendment to endorsement forms approved for use with the standard owner's policy.

(11) Ninety days after the publication of an amendment in The Alberta Gazette or at a later date specified in the Gazette notice, despite anything in this Act and any contract that is then in force,

- (a) the amendment is deemed to be incorporated into the previously approved form and into any contract that incorporated that form, and
- (b) the amendment becomes otherwise effective.

(12) Despite subsection (11), the amendment also applies to contracts entered into or renewed after the date referred to in that subsection.

Application and Policy

Agents

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

Application for insurance

553(1) A copy of the written application, signed by the insured or the insured's agent, or, if no signed application is made, a copy of the purported application, or a copy of the part of the application or purported application that is material to the contract, must be embodied in, endorsed on 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 must 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) Subject to subsection (8), the insurer must 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 of the policy and every endorsement or other amendment to the contract.

(4) When a written application signed by the insured or the insured's agent is made for a contract, the policy evidencing the contract is 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 is deemed to have accepted the policy unless, within 2 weeks from the receipt of the notification, the insured informs the insurer in writing that the insured rejects the policy.

(5) If the insured rejects the policy under subsection (4), the insurer must refund as soon as practicable the excess of premium actually paid by the insured over the prorated premium for the expired time, but in no event may the prorated premium for the expired time be less than any minimum retained premium specified in the contract.

(6) Despite subsection (5), if the insured failed to disclose material information on the application the knowledge of which would have resulted in the insurer charging a higher premium than what was charged, the amount that the insurer is required to refund under subsection (5) is the excess of premium actually paid by the insured over the short rate premium for the expired time calculated as if the higher premium had been charged.

(7) If the insured does not reject the policy under subsection (4), the insured is deemed to have accepted the policy.

(8) When an insurer uses the standard owner's policy, it may, instead of issuing the policy, issue a certificate in a form approved by the Superintendent, which, when issued, is of the same force and effect as if it were the standard owner's policy, subject to the limits and coverages shown on the certificate by the insurer and any endorsements issued concurrently with the certificate or subsequent to the certificate, but at the request of an insured at any time, the insurer must issue the policy and a copy of the written application or purported application as required by subsection (1).

(9) When a certificate is issued pursuant to subsection (8), subsection (11) and section 584(3) apply with all necessary modifications.

(10) When an insurer issues a certificate pursuant to subsection (8), proof of the contents may be given by production of a copy of The Alberta Gazette containing the form of standard owner's policy approved by the Superintendent.

(11) Every application form and policy must have printed or stamped on it in conspicuous bold type a copy of section 554(1).

Misrepresentation, fraud or violation of condition

554(1) If

- (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 in the application,
- (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 may be used in defence of a claim under the contract unless it is contained in the signed written application for the contract or, when no signed written application is made, in the purported application, or part of the application, that is embodied in, endorsed on or attached to the policy.

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

Adverse contractual action

555(1) In this section, “adverse contractual action” means

- (a) refusing to provide a premium quotation within a reasonable time;
- (b) refusing to process an application for automobile insurance;
- (c) refusing to issue a contract;
- (d) refusing to renew a contract;
- (e) terminating a contract;
- (f) cancelling a contract;
- (g) refusing to provide any coverage or endorsement;
- (h) refusing to continue any coverage or endorsement;
- (i) any action respecting a contract not referred to in clauses (a) to (h) that is prescribed or otherwise described by regulation as adverse contractual action.

(2) This section applies only to adverse contractual action taken in respect of basic coverage on private passenger vehicles.

(3) An insurer, insurance agent or insurance broker shall not, directly or indirectly, take any adverse contractual action with respect to an insured or an applicant for a contract except for one or more of the following reasons:

- (a) the non-payment of a premium or any portion of a premium;
- (b) the failure of the insured or the applicant for a contract to inform the insurer or to keep the insurer informed, where requested to do so by the insurer, as to who is the principal driver of the automobile for which the insurance coverage is or is to be issued;
- (c) in the case of an insurer that is a provincial or extra-provincial company, the insurer is required to cease to undertake or to offer to undertake insurance in Alberta pursuant to section 25(2);

- (d) the insurer's licence is suspended or cancelled under section 54, 55, 819 or 819.1;
- (e) in the case of an insurer that is a federally authorized company, the federal Superintendent of Financial Institutions has ordered or otherwise directed the insurer to cease carrying on business or insuring risks in Canada;
- (f) the insurer has filed notice under section 611(3) that the insurer intends to withdraw from the business of automobile insurance;
- (g) where permitted by regulation, any reasons not referred to in clauses (a) to (f) that are prescribed or otherwise described by regulation.

(4) Where

- (a) a premium or any portion of a premium that is owing in respect of a contract is in arrears,
- (b) the insurer takes adverse contractual action because those arrears have not been paid, and
- (c) the person liable for those arrears applies to the insurer to renew or issue a contract or to any other insurer to issue a contract,

the insurer may refuse to renew or issue a contract to that person, as the case may be, until those arrears are paid to the insurer to which the arrears are owing.

(5) The Lieutenant Governor in Council may make regulations

- (a) permitting adverse contractual action to be taken other than under subsection (3)(a) to (f) and prescribing or otherwise describing any reasons not referred to in subsection (3)(a) to (f) for which adverse contractual action may be taken;
- (b) prescribing or otherwise describing any action not referred to in subsection (1)(a) to (h) as adverse contractual action;
- (c) governing the taking of adverse contractual action;
- (d) governing the issuing or renewing of contracts;

- (e) governing any transitional matter concerning the application of this section in respect of matters dealt with under this section;
- (f) providing for any matter that the Lieutenant Governor in Council considers advisable for carrying out the purpose and intent of this section.

(6) This section applies despite any other Act.

Statutory conditions

556(1) Subject to sections 551(3), 557 and 584(2),

- (a) the conditions set out in this section are statutory conditions and are deemed to be part of every contract and must be printed in every policy under the heading “Statutory Conditions”, and
- (b) no variation or omission of or addition to any statutory condition is binding on the insured.

(2) In this section, “policy” does not include an interim receipt or a binder.

Statutory Conditions

In these statutory conditions, unless the context otherwise requires, “insured” means a person insured by the contract whether named in the contract or not.

MATERIAL CHANGE IN RISK 1(1) The insured named in the contract must promptly notify the insurer or its agent in writing of any change in the risk material to the contract and within the insured’s knowledge.

(2) Without restricting the generality of subparagraph (1) of this condition, “change in the risk material to the contract” includes

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

- (b) in respect of insurance against loss of or damage to the automobile,
 - (i) any mortgage, lien or encumbrance affecting the automobile after the application for the contract, and
 - (ii) any other insurance of the same interest, whether valid or not, covering loss or damage insured by the contract or any portion of the contract.

PROHIBITED USE BY INSURED 2(1) The insured must not drive or operate the automobile

- (a) unless the insured is for the time being either authorized by law or qualified to drive or operate the automobile,
- (b) while the insured's licence to drive or operate an automobile is suspended or while the insured's right to obtain a licence is suspended or while the insured is prohibited under order of any court from driving or operating an automobile,
- (c) while the insured is under the age of 16 years or under any other age prescribed by the law of the province in which the insured resides at the time the contract is made as being the minimum age at which a licence or permit to drive an automobile may be issued to the insured,
- (d) for any illicit or prohibited trade or transportation, or
- (e) in any race or speed test.

PROHIBITED USE BY OTHERS (2) The insured must not permit or allow the use of the automobile

- (a) 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 any other age prescribed by the law of the province in which the person resides at the time the contract is made as being the minimum age at which a licence or permit to drive an automobile may be issued to the person,

- (b) by any person who is a member of the household of the insured while the person's licence to drive or operate an automobile is suspended or while the person's right to obtain a licence is suspended or while the person is prohibited under order of any court from driving or operating an automobile,
- (c) for any illicit or prohibited trade or transportation, or
- (d) in any race or speed test.

REQUIREMENTS WHERE LOSS OR DAMAGE TO PERSONS OR PROPERTY 3(1) The insured must

- (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 the contract, and
- (c) forward immediately to the insurer every letter, document, advice or writ received by the insured from or on behalf of the claimant.

(2) The insured must not

- (a) voluntarily assume any liability or settle any claim except at the insured's own cost, or
- (b) interfere in any negotiations for settlement or in any legal proceeding.

(3) The insured must, whenever requested by the insurer, aid in securing information and evidence and the attendance of any witness, and must 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) When loss of or damage to the automobile

occurs, the insured must, if the loss or damage is covered by the contract,

- (a) promptly give notice of the loss or damage 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 the insured's knowledge and belief, the place, time, cause and amount of the loss or damage, the interest of the insured and of all others in the automobile, the encumbrances on the automobile, 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 subparagraph (1) of this condition is not recoverable under the contract.

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

- (a) without the written consent of the insurer, or
- (b) until the insurer has had a reasonable opportunity to make the inspection for which provision is made in Statutory Condition 5.

(4) The insured must submit to examination under oath and must produce for examination at any reasonable place and time designated by the insurer or its representative all documents in the insured's possession or control that relate to the matters in question, and the insured must permit extracts and copies of the documents to be made.

(5) The insurer is not liable for more than the actual cash value of the automobile at the time any loss or damage occurs, and the loss

or damage must be ascertained or estimated according to that actual cash value with proper deductions for depreciation, however caused, and must not exceed the amount that it would cost to repair or replace the automobile, or any part of the automobile, with material of similar kind and quality, but if any part of the automobile is obsolete and unavailable, the liability of the insurer in respect of the automobile is limited to the value of that part at the time of loss or damage, not exceeding the maker's latest list price.

(6) Except where a dispute resolution process has been initiated, the insurer, instead of making payment, may, within a reasonable time, repair, rebuild or replace the property damaged or lost with other of similar kind and quality if, within 7 days after the receipt of the proof of loss, it gives written notice of its intention to do so.

(7) There must be no abandonment of the automobile to the insurer without the insurer's consent.

(8) If the insurer exercises the option to replace the automobile or pays the actual cash value of the automobile, the salvage, if any, vests in the insurer.

(9) 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 of the loss or damage, those questions must be determined by a dispute resolution process as provided under the *Insurance Act* before there can be recovery under the contract, whether the right to recover under the contract is disputed or not, and independently of all other questions.

(10) There is no right to a dispute resolution process until

- (a) a specific demand for it is made in writing, and
- (b) the proof of loss has been delivered.

INSPECTION OF AUTOMOBILE 5 The insured must 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 must pay the insurance money for which it is liable under the contract within 60 days after the proof of loss has been received by it or, where a dispute resolution

process is conducted under Statutory Condition 4(9), within 15 days after the decision is rendered.

(2) The insured may not bring an action to recover the amount of a claim under the contract unless the requirements of Statutory Conditions 3 and 4 are complied with or until the amount of the loss has been ascertained as provided for under Statutory Conditions 3 and 4 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.

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 the 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) The contract may be terminated

- (a) by the insurer giving to the insured 15 days' notice of termination by registered mail or 5 days' written notice of termination personally delivered, or
- (b) by the insured at any time on request.

(2) If the contract is terminated by the insurer,

- (a) the insurer must refund the excess of premium actually paid by the insured over the prorated premium for the expired time, but in no event may the prorated premium for the expired time be less than any minimum retained premium specified, and
- (b) the refund must accompany the notice unless the premium is subject to adjustment or determination as to the amount, in which case the refund must be made as soon as practicable.

(3) If the contract is terminated by the insured, the insurer must 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 may the short rate premium for the expired term be deemed to be less than any minimum retained premium specified.

(4) The 15-day period referred to in subparagraph (1)(a) of this condition starts to run on the day the registered letter or notification of it is delivered to the insured's postal address.

NOTICE 9(1) 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.

(2) Written notice may be given to the insured named in the contract by letter personally delivered to the insured or by registered mail addressed to the insured at the insured's latest postal address as notified to the insurer.

(3) In this condition, "registered" means registered in or outside Canada.

Conditions not part of policy

557(1) Except as otherwise provided in the contract, the statutory conditions set out in section 556 do not apply to insurance described in section 586, 587 or 588.

(2) When a contract does not insure against liability for loss or damage to persons and property, Statutory Condition 3 set out in section 556 is not a part of the policy and may be omitted from the printing of the conditions in the policy.

(3) When a contract does not insure against loss of or damage to the automobile, Statutory Condition 4 set out in section 556 is not a part of the policy and may be omitted from the printing of the conditions in the policy.

Limitation of actions

558(1) An action or proceeding against an insurer under a contract must be commenced

- (a) in the case of loss of or damage to the automobile, not later than 2 years after the occurrence of the loss or damage, and
- (b) in the case of loss or damage to persons or property, not later than 2 years after the cause of action against the insurer arose.

(2) A policy to which this Subpart applies must contain the following statement:

Every action or proceeding against an insurer for the recovery of insurance money payable under the contract is absolutely barred unless commenced within the time set out in the *Insurance Act*.

Motor Vehicle Liability Policies

Coverage of owner's policy

559(1) Every contract evidenced by an owner's policy insures the insured named in the contract (the "named insured") and every other person who with the named insured's consent drives an automobile owned by the named insured that falls within the description or definition of automobile in the contract against liability imposed by law on the named insured or those other persons for loss or damage

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

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

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

- (a) the spouse or adult interdependent partner of the deceased insured if residing in the same dwelling place as the deceased insured at the time of the deceased insured's death;
- (b) in respect of the described automobile, a newly acquired automobile that was acquired by the deceased insured prior to the deceased insured's death and a temporary substitute automobile, all as defined by the policy,
 - (i) any person having proper temporary custody of the automobile until grant of probate or administration to the personal representative of the deceased insured, and

- (ii) the personal representative of the deceased insured.

Coverage of non-owner's policy

560 Every contract evidenced by a non-owner's policy insures the person named in the contract and any other person who is specified in the policy against liability imposed by law on the insured named in the contract or that other person for loss or damage

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

Effect of lien on automobile

561 For the purposes of this Subpart, a person is not deemed to be the owner of an automobile by reason only that the person has a lien on the automobile or has legal title to the automobile as security.

Territorial limits

562 Insurance under section 559 or 560 applies to the ownership, use or operation of the insured automobile within Canada and the United States of America and on a vessel travelling between ports of those countries.

Rights of unnamed insured

563 Any person insured by but not named in a contract to which section 559 or 560 applies may recover indemnity in the same manner and to the same extent as if named in the contract as the insured and for that purpose is deemed to be a party to the contract and to have given consideration for the contract.

Liability of insurer

564 Every contract evidenced by a motor vehicle liability policy must provide that when 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 must

- (a) on receipt of notice of loss or damage caused to persons or property, make any investigations, conduct any negotiations with the claimant and effect any settlement of any resulting claims that are considered expedient by the insurer,
- (b) defend in the name of and on behalf of the insured and at the cost of the insurer any civil action that is brought against the insured at any time 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 on that part of the judgment that is within the limits of the insurer's liability, and
- (d) if the injury is to a person, reimburse the insured for outlay for any medical aid that is immediately necessary at the time.

Liability arising from contamination

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

Exceptions to liability of insurer

566 The insurer is not liable under a contract evidenced by a motor vehicle liability policy for any liability

- (a) imposed by any workers' compensation law on any person insured by the contract, or
- (b) 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.

Exceptions to liability of insurer

567 The insurer may provide under a contract evidenced by a motor vehicle liability policy that it is not liable for either of the following:

- (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 on the

automobile in the course of that business unless the person is the owner of the automobile or is the owner's employee;

- (b) for loss of or damage to
 - (i) property carried in or on the automobile, or
 - (ii) any property owned or rented by or in the care, custody or control of the insured.

Exceptions to liability of insurer

568 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 that it is not liable for loss or damage resulting from the ownership, use or operation of any machinery or apparatus, including its equipment, mounted on or attached to the automobile while that automobile is at the site of the use or operation of that machinery or apparatus.

Exceptions to liability of insurer

569(1) The insurer may provide under a contract evidenced by a motor vehicle liability policy that it is not liable in any one or more of the following cases:

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

(2) Subsection (1)(a) does not include the use by an employee of the employee's automobile in the business of the employee's employer for which the employee is paid.

(3) In subsection (1)(b), "radioactive material" means

- (a) spent nuclear fuel rods that have been exposed to radiation in a nuclear reactor,
- (b) radioactive waste material,

- (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.

(4) Subsection (1)(c) does not include

- (a) the use by an insured of the automobile for the carriage of another person in return for the insured's carriage in the automobile of the other person,
- (b) the occasional and infrequent use by an insured of the automobile for the carriage of another person who shares the cost of the trip,
- (c) the use by an insured of the automobile for the carriage of a temporary or permanent domestic servant of the insured or the insured's spouse or adult interdependent partner,
- (d) the occasional and infrequent use by an insured of the automobile for the transportation of children to or from activities conducted as part of an educational program, or
- (e) the use by an insured of the automobile for the carriage of a client or customer or a prospective client or customer.

Reductions of automobile accident claim awards

570(1) In this section,

- (a) "award" means a judgment or settlement in respect of an accident claim;
- (b) "prescribed" means provided for in regulations made under subsection (8).

(2) To the extent that an award is for or is determined with reference to loss of earnings, the amount of the award must be reduced by

- (a) income tax, if the award is not subjected to income tax,
- (b) contributions by employees, and 50% of contributions by self-employed persons, under the *Canada Pension Plan* (Canada), and

- (c) premiums under the *Employment Insurance Act* (Canada) relating to the state of being employed,

that would be or would have been payable on or with reference to the lost earnings, both before and after the award, had the accident not occurred.

(3) The whole of or the portion of an award that is for or is calculated with reference to a head of damages to which any payment in any form specified in subsection (4) relates must be reduced by the aggregate of all payments, both before and after the award, and net of tax, contributions and premiums referred to in subsection (2)(a) to (c) paid or payable on those payments, that

- (a) are received by or on behalf of the claimant as a result of or otherwise in respect of the accident,
- (b) are in any form specified in subsection (4)(a) to (h), and
- (c) relate to that head of damages.

(4) The forms of payment referred to in subsection (3) are

- (a) medical, dental, disability, rehabilitation, income continuation or replacement and hospitalization benefits paid on a no-fault basis and received by or on behalf of a resident of a jurisdiction other than Alberta under a contract of automobile insurance,
- (b) medical care, accident and sickness benefits comprising medical care or goods or services that are not provided under the *Alberta Health Care Insurance Act* or, where the claimant is a resident of another jurisdiction, the equivalent legislation of that jurisdiction, or that exceed the limits for that care or those goods or services under that Act or that equivalent legislation,
- (c) proceeds of a contract that falls within Subpart 6 or the legislation of another jurisdiction that is equivalent to that Subpart,
- (d) benefits under a prescribed income continuation or replacement plan or scheme,

- (e) benefits under an income replacement plan or scheme referred to in section 15.1,
- (f) disability pensions under the *Canada Pension Plan* (Canada) or under any equivalent legislation of a jurisdiction outside Canada,
- (g) compensation under legislation of another jurisdiction that is equivalent to the *Workers' Compensation Act* and its regulations, in respect of disability, medical, dental, rehabilitation or hospitalization expenses, and
- (h) any other prescribed payments, benefits or compensation under the laws of any jurisdiction, other than laws referred to in clauses (e), (f) and (g).

(5) The reference in subsection (3) to payments received is deemed to include circumstances where a legal obligation to make the payments or to provide related benefits referred to in subsection (4) to or on behalf of the claimant (netted, where applicable, as referred to in subsection (3)) has been established or acknowledged before the award.

(6) A person who makes or assumes liability for a payment referred to in subsection (3) is not subrogated to a right of recovery of the insured against another person in respect of that payment.

(7) Nothing in this section is to be construed as limiting a court's ability to take into account any premiums or other amounts paid by a claimant in respect of any benefits, policies, plans or compensation in any form specified in subsection (4).

(8) For the purposes of this section, the Lieutenant Governor in Council may make regulations

- (a) respecting any matter or thing that may be or is to be prescribed for the purposes of this section, and
- (b) defining, for the purposes of this section, any expression used in it and not defined in this Subpart.

(9) This section does not apply to any accident claim that arose in respect of an accident that occurred before the coming into force of this section.

Limits of motor vehicle liability policy

571(1) Every contract evidenced by a motor vehicle liability policy insures, in respect of any one accident, to a limit of not less than \$200 000, 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) A contract must be interpreted to mean that when, 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 \$190 000 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 \$10 000 over claims arising out of bodily injury or death.

(3) The insurer may, instead of specifying a limit in the policy for an inclusive amount, specify a limit of liability of at least \$200 000, 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 \$200 000, exclusive of interest and costs, against liability for loss of or damage to property.

(4) Nothing in this Subpart 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).

(5) The premium for the insurance required under this section must be shown separately on the motor vehicle liability policy from the premium for any additional or other benefits under the policy.

(6) Despite subsection (4) but subject to section 555, no insurer may refuse a request by an insured or an applicant for a contract to increase the limit to one of the following amounts, 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:

- (a) \$500 000;

(b) \$1 000 000;

(c) \$2 000 000.

Hospitals Act

572(1) No amount that is required to be paid to the Crown under Part 5, Division 2 of the *Hospitals Act* may be shown as a separate amount on

(a) an application for automobile insurance,

(b) a motor vehicle liability policy, or

(c) a certificate referred to in section 553(8).

(2) This section is repealed on Proclamation.

Accident insurance benefits

573(1) In this section,

(a) “benefits” means accident insurance benefits provided for in this section or in regulations made under subsection (7)(c);

(b) “prescribed” means provided for by regulations made under this section.

(2) A contract evidenced by a motor vehicle liability policy insures in respect of an accident, for accident insurance benefits payable to the prescribed person, in or to at least the prescribed amounts and in accordance with or subject to this section and the prescribed terms, conditions, restrictions and exclusions.

(3) The insurer, on the death of an insured, must pay

(a) death benefits, and

(b) actual funeral costs up to the prescribed maximum amount.

(4) If an insured is totally disabled, the insurer must pay a weekly disability benefit.

(5) The insurer must pay the prescribed medical payments.

(6) Section 588 applies to the benefits.

(7) The Lieutenant Governor in Council may make regulations

- (a) respecting any matter or thing that may be or is to be prescribed for the purposes of this section;
- (b) defining for the purposes of this section any expression used in it;
- (c) increasing the amount of any of the benefits;
- (d) establishing or governing a system or process for the examination, assessment and treatment or rehabilitation of bodily injuries suffered by an insured as a result of an accident in respect of which benefits are payable under this section;
- (e) governing the payment of any fees, levies or other assessments in respect of a system or process established under clause (d), including, without limitation, regulations respecting
 - (i) the amount of the fees, levies or other assessments or the manner in which and by whom any of those amounts are to be determined, and
 - (ii) to whom and by whom the fees, levies or other assessments are to be paid;
- (f) providing for any matter that the Lieutenant Governor in Council considers advisable for carrying out the purpose and intent of this section.

Stipulation in motor vehicle liability policy

574(1) Every motor vehicle liability policy issued in Alberta must provide that, in the case of liability arising out of the ownership, use or operation of the automobile in any province or territory,

- (a) the insurer is liable up to the minimum limits established for that province or territory if those limits are higher than the limits established in the policy,
- (b) the insurer must 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 as the insured's irrevocable attorney to appear and defend in any province or territory 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 subsection (1)(c) is binding on the insured.

Excess insurance

575(1) Nothing in this Subpart precludes an insurer from providing under a contract evidenced by a motor vehicle liability policy insurance 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 first loss insurance or excess insurance.

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

Agreements re deductible amounts

576 Nothing in this Subpart 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 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.

Coverage under motor vehicle liability and nuclear energy hazard liability policies

577(1) In this section, "nuclear energy hazard" means the radioactive, toxic, explosive or other hazardous properties of prescribed substances under the *Nuclear Safety and Control Act* (Canada).

(2) When an insured, whether named in the contract or not, is covered 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 loss of or damage to property arising directly or indirectly out of a nuclear energy hazard and is, whether named in the contract or not, also covered against that 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 established by section 571, and
- (b) an unnamed insured under the contract of nuclear energy hazard liability insurance may, in respect of the loss or damage, recover indemnity under that contract in the same manner and to the same extent as if named in the contract as the insured, and for that purpose the unnamed insured is deemed to be a party to the contract and to have given consideration for the contract.

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

Determining which insurer is liable

578(1) When 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 insurance, and a question arises under section 564(b) between an insurer and the insured or between the insurers as to which insurer must undertake the obligation to defend in the name of and on behalf of the insured, the insured or any insurer may, whether or not any insurer denies liability under its contract, apply to the Court, and the Court may by order give any directions that appear proper with respect to the performance of the obligation.

(2) The only parties entitled to notice of an application under subsection (1) and to be heard are the insured and the insured's insurers, and no material or evidence used or taken on the application is admissible on 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) When indemnity is provided to the insured under 2 or more contracts and one or more of them are excess insurance, the insurers must, as between themselves, contribute to the payment of expenses, costs and reimbursement for which provision is made in section 564 in accordance with their respective liabilities for damages awarded against the insured.

Rights of creditors

579(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, even if that person is not a party to the contract, may, on recovering a judgment in respect of the claim against the insured in any province or territory, have the insurance money payable under the contract applied in or toward satisfaction of the judgment and of any other judgments or claims against the insured covered by the contract and may, on the person's own behalf and on behalf of all persons having such judgments or claims, maintain an action against the insurer to have the insurance money so applied.

(2) No action may 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 the creditor's 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 in or toward the person's judgment or claim is not prejudiced by

- (a) an assignment, waiver, surrender, cancellation or discharge of the contract, or of any interest in or of the proceeds of the contract, made by the insured after the event giving rise to the person's claim under the contract,
- (b) any act or default of the insured before or after that event in contravention of this Subpart or of the terms of the contract, or

- (c) any contravention of the *Criminal Code* (Canada) or a statute of any province or territory or of any state or the District of Columbia of the United States of America by the owner or driver of the automobile,

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, with all necessary modifications, 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 referred to in subsection (1) to be made parties to the action and to contribute according to their respective liabilities, whether the contribution is rateable or by way of first loss or excess insurance, as the case may be, and the insured must on demand furnish the insurer with particulars of all other insurance covering the subject-matter of the contract.

(7) When a person has recovered a judgment against the insured and is entitled to maintain an 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 make an order accordingly on any notice it thinks necessary.

(8) The receipt of the proper officer of the Court is a sufficient discharge to the insurer for the insurance money paid into Court under subsection (7), and the insurance money must be dealt with as the Court orders on application of any interested person.

(9) Despite anything to the contrary contained in a contract evidenced by a motor vehicle liability policy, every contract

evidenced by a motor vehicle liability policy is deemed, for the purposes of this section, to provide all the types of coverage mentioned in section 569, but the insurer is not liable to a claimant with respect to the coverage in excess of the limits established by section 571(1).

(10) Despite subsection (4), when one or more contracts provide for coverage of a type mentioned in section 567 or 568, the insurer may, except as provided in subsection (12),

- (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.

(11) Despite subsection (4), when one or more contracts provide for coverage in excess of the limits established by section 571, the insurer may, except as provided in subsection (12),

- (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 other than a defence arising out of a breach of Statutory Condition 2 set out in section 556.

(12) When a contract provides coverage for loss or damage resulting from bodily injury to or the death of any person being carried in or on, entering, getting on or alighting from an automobile that is operated in the business of carrying passengers for compensation or hire and insured for that purpose, the insurer may, despite subsection (4),

- (a) with respect to that type of coverage in excess of the limits established by section 571 or the minimum limits required for that type of coverage under any other Act, whichever is the greater amount, and
- (b) as against a claimant,

avail itself of any defence that it is entitled to set up against the insured other than a defence arising out of a breach of Statutory Condition 2 set out in section 556.

(13) The insured must reimburse the insurer on demand in the amount that the insurer has paid by reason of this section that it would not otherwise be liable to pay.

(14) When an insurer denies liability under a contract evidenced by a motor vehicle liability policy, it must, on 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) On 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 adverse 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) even if another insurer is defending, in the name of and on behalf of the insured, an action to which its insured is a party.

Regulations re notice of legal representation

580 The Lieutenant Governor in Council may make regulations requiring a lawyer retained by a plaintiff in an action arising out of an accident to give notice of that fact to the defendant's insurer, including regulations respecting the time at which and the manner in which that notice must be given.

Payment as release of claim

581(1) When 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 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 the person's personal representative of any claim that the person or the person's personal representative or any person claiming through or under the person 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 the person's personal representative or any other person to the extent of the payment.

(3) If the person commences an action, the Court must adjudicate on the matter first without reference to the payment, but in giving judgment the Court must take the payment into account and the person is entitled to judgment only 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 the defendant's insurer, either as an admission of liability or otherwise, and the fact of any payment must not be disclosed to the judge or jury until after judgment but may be disclosed before formal entry of the judgment.

(5) The Lieutenant Governor in Council may make regulations

- (a) authorizing the Court to make an order requiring an insurer to make a payment under this section to a claimant in advance of any judgment;
- (b) prescribing or otherwise describing the circumstances under which an order referred to in clause (a) may be made.

Notice of action against insured to insurer

582(1) Every insured against whom an action is commenced for damages occasioned by an automobile must give notice in writing of each notice or process in the action to the insurer within 5 days after service of each notice or process.

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

Regulations re disclosure of policy limits

583 The Lieutenant Governor in Council may make regulations respecting the disclosure of liability limits under a motor vehicle liability policy, including, without limitation, regulations respecting

- (a) the circumstances under which the disclosure must be made;
- (b) to whom and by whom the disclosure must be made;
- (c) the form and manner in which and the time at which the disclosure must be made.

Physical damage cover

584(1) Subject to section 551(1), the insurer may provide in a contract any exclusions and limitations in respect of loss of or damage to or the loss of use of the automobile that it considers necessary.

(2) A contract or part of a contract providing insurance against loss of or damage to an automobile and the loss of use of an automobile may contain a clause to the effect that, in the event of loss, the insurer is required to 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,

in either case not exceeding the amount of the insurance.

(3) When a clause is included in accordance with subsection (2), there must be printed or stamped on the face of the policy in conspicuous bold type the words: "This policy contains a partial payment of loss clause."

Adjustment of claim with insured

585(1) When a claim is made under any contract other than a contract evidenced by a motor vehicle liability policy, the insurer must, despite 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) When notice is given or a 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 set out in section 556, the insurer may, despite subsection (1) but in any event not earlier than 60 days from delivery of the statutory declaration required under Statutory Condition 4(1)(c), adjust and pay the claim to the other person having an interest indicated in the contract.

Limited Accident Insurances

Uninsured motorist

586(1) If 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 when

- (a) there is legal liability of another person for the injury or death, and
- (b) the other person has no insurance against the liability for the injury or death or cannot be identified,

that insurance applies only in respect of

- (c) a person who sustains bodily injury or death while driving, being carried in or on, entering, getting on or alighting from the described automobile in respect of which insurance against liability arising out of bodily injury to or the death of a person caused by an automobile or the use or operation of an automobile is provided under the contract, and
- (d) the insured named in the contract and the spouse or adult interdependent partner of the insured named in the contract and any dependent relative residing in the same dwelling place as the insured named in the contract who sustains bodily injury or death while driving, being carried in or on, entering, getting on 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 in the contract who has a right of recovery under the *Motor Vehicle Accident Claims Act* or similar legislation of any other province or territory or of any state or the District of Columbia of the United States of America.

Medical expenses, etc.

587(1) When 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, being carried in or on, entering, getting on 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 against liability arising out of bodily injury to or the death of a person caused by an automobile or the use or operation of an automobile is provided under the contract, and
- (b) of the insured named in the contract and the spouse or adult interdependent partner of the insured named in the contract and any dependent relative residing in the same dwelling place as the insured named in the contract who sustains bodily injury or death while driving, being carried in or on, entering, getting on 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) When an insurer makes a payment under a contract referred to in subsection (1), the payment constitutes, to the extent of the payment, a release by the insured or the insured's personal representatives of any claim that

- (a) the insured or the insured's personal representatives, or
- (b) any person claiming through or under the insured or by virtue of the *Fatal Accidents Act*

may have against

- (c) the insurer, and

(d) any other person who may be liable to the insured or the insured's personal representatives if that other person is insured under a contract of the same type as that referred to in subsection (1).

(3) Nothing in subsection (2) precludes an insurer from demanding, as a condition precedent to payment, a release to the extent of the payment from the insured or the insured's personal representatives or any other person.

(4) The insurance referred to in subsection (1)(a) 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.

(5) The insurance referred to in subsection (1)(a) is excess insurance to any other insurance, other than automobile insurance, of the same type indemnifying the injured person or in respect of a deceased person for the expenses.

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

Accident insurance benefits

588(1) When in a contract an insurer provides accident insurance benefits in respect of the death of or injury to an insured arising out of an accident, the insurance applies only in respect of

- (a) a person who sustains bodily injury or death while driving, being carried in or on, entering, getting on 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 against liability arising out of bodily injury to or the death of a person caused by an automobile or the use or operation of an automobile is provided under the contract, and
- (b) the insured named in the contract and the spouse or adult interdependent partner of the insured named in the contract and any dependent relative residing in the same dwelling place as the insured named in the contract who sustains bodily injury or death while driving, being carried in or on, entering, getting on or alighting from, or as a result of being

struck by, any other automobile that is defined in the policy for the purposes of that insurance.

(2) When an insurer makes a payment under a contract referred to in subsection (1), the payment constitutes, to the extent of the payment, a release by the insured or the insured's personal representatives of any claim that

- (a) the insured or the insured's personal representatives, or
- (b) any person claiming through or under the insured or by virtue of the *Fatal Accidents Act*

may have against

- (c) the insurer, and
- (d) any other person who may be liable to the insured or the insured's personal representatives if that other person is insured under a contract of the same type as that referred to in subsection (1).

(3) Nothing in subsection (2) precludes an insurer from demanding, as a condition precedent to payment, a release to the extent of the payment from the insured or the insured's personal representatives or any other person.

(4) Subject to subsection (6), the insurance referred to in subsection (1)(a) 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.

(5) Subject to subsection (6), the insurance referred to in subsection (1)(b) is excess insurance over any other automobile insurance of the same type available to the injured person or in respect of a deceased person.

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

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

Demand for particulars of insurance

589(1) When a person is injured or killed in an accident in Alberta involving an automobile, that person or the person's personal representative may serve a demand by registered mail

- (a) on the owner of the automobile, or
- (b) 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 referred to in section 587 or 588 and, when the demand is made under clause (a), requiring the owner, if the owner has that insurance, to state the name of the insurer.

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

Recovery by unnamed insured

590 Any person insured by but not named in a contract to which section 586, 587 or 588 applies may recover under the contract in the same manner and to the same extent as if named in the contract as the insured, and for that purpose is deemed to be a party to the contract and to have given consideration for the contract.

Priority of payments

591(1) When a person entitled to benefits provided by insurance under a contract referred to in section 587 or 588

- (a) is an occupant of an automobile involved in an accident, the insurer is, in the first instance, liable for payment of the benefits provided by the insurance, or
- (b) is a pedestrian and is involved in an automobile accident, the insurer of the owner of that automobile is, in the first instance, liable for payment of the benefits provided by the insurance.

(2) Nothing in this section affects the operation of section 587(2) to (6) or 588.

Payment of insurance money into Court

592(1) When an insurer admits liability for insurance money payable under section 586, 587 or 588 and it appears to the insurer that

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

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

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

Limitation re commencement of action

593 An action or proceeding against an insurer in respect of insurance under a contract referred to in section 586, 587 or 588 must be commenced within the limitation period specified in the contract, but in no event may the limitation period be less than 2 years from the occurrence of the accident.

Demand on claimant for particulars

594 When a person makes a claim for damages in respect of bodily injury or death sustained by the person or any other person while driving, being carried in or on, entering, getting on or alighting from, or as a result of being struck by, an automobile, the claimant must, if required by the person against whom the claim is made or by someone acting on the person's behalf, furnish to or for that person full particulars of all insurance available to the claimant under contracts to which section 587 or 588 applies, and of any payments of insurance money made or to be made under those contracts.

Variations in policy

595 Subject to section 551(1), an insurer may in a policy

- (a) provide insurance that is less extensive in scope than the insurance referred to in section 586, 587 or 588, and
- (b) provide the terms of the contract that relate to the insurance referred to in section 586, 587 or 588.

Other Insurance

Proportioning liability of insurer

596(1) Subject to section 577, insurance under a contract evidenced by a valid owner's policy 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 of an automobile 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 subsection (1) and to sections 577, 587 and 588, 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 the named insured's interest in the subject-matter of the contract or any part of the contract, the insurer is liable only for its rateable proportion of any liability, expense, loss or damage.

(3) In subsection (2), "rateable proportion" means

- (a) if there are 2 insurers liable and each has the same policy limits, each of the insurers is liable to share equally in any liability, expense, loss or damage, or
- (b) if there are 2 insurers liable with different policy limits, the insurers are liable to share equally up to the limit of the smaller policy limit,

and if there are more than 2 insurers liable, clauses (a) and (b) apply with all necessary modifications.

(4) Despite subsection (1), the Lieutenant Governor in Council may make regulations

- (a) respecting the priority of payment of insurance held by a lessor as defined in section 187 of the *Traffic Safety Act* or a rental car company in respect of liability arising from or occurring in connection with the ownership, use or operation of an automobile owned by the lessor or rental car company;
- (b) defining terms for the purposes of this section;
- (c) where regulations are made under clause (a) or (b), modifying any provision of this Act to the extent that the Lieutenant Governor in Council considers necessary in order to carry out the purpose and intent of this section.

Minor Injuries

Minor injury

597(1) In this section, “minor injury” means an injury as defined or otherwise described by regulation as a minor injury.

(2) In an accident claim, the amount recoverable as damages for non-pecuniary loss of the plaintiff for a minor injury must be calculated or otherwise determined in accordance with the regulations.

(3) The Lieutenant Governor in Council may make regulations

- (a) defining minor injury or otherwise describing what constitutes a minor injury;
- (b) providing for the classification of or categories of minor injuries;
- (c) providing for the assessment of injuries, including, without limitation, regulations establishing or adopting guidelines, best practices or other methods for assessing whether an injury is or is not a minor injury;
- (d) governing damages, including the amounts of or limits on damages, for non-pecuniary loss for minor injuries;
- (e) governing deductible amounts or limits and the application of those amounts or limits in respect of damages for non-pecuniary loss for minor injuries;

- (f) providing for or otherwise setting out circumstances under which a minor injury to which this section would otherwise apply is exempt from the operation of this section;
- (g) governing the application of this section in respect of injuries arising out of an accident where
 - (i) it is unclear whether or not this section applies to those injuries, or
 - (ii) the injuries consist of a combination of minor injuries to which this section applies and injuries to which this section does not apply;
- (h) establishing and governing a system or process under which a person or a committee, panel or other body may review any injury to a person and give an opinion as to whether or not the injury is a minor injury;
- (i) providing for the appointment or designation of persons or of members of committees, panels or other bodies for the purposes of a system or process established under clause (h);
- (j) governing the payment of any fees, levies and other assessments in respect of a system or process established under clause (h), including, without limitation, regulations respecting
 - (i) the amount of the fees, levies or other assessments or the manner in which and by whom any of those amounts are to be determined, and
 - (ii) by whom and to whom the fees, levies or other assessments are to be paid;
- (k) governing any transitional matter concerning the application of this section in respect of matters dealt with under this section;
- (l) providing for any matter that the Lieutenant Governor in Council considers advisable for carrying out the purpose and intent of this section.

(4) This section does not apply to any accident claim that arose in respect of an accident that occurred before the coming into force of this section.

Automobile Insurance Rate Board

Definitions

598 In this section and sections 599 to 608,

- (a) “additional coverage” means automobile insurance that may be made available by an insurer that supplements basic coverage, including, without limitation, collision coverage;
- (b) “Board” means the Automobile Insurance Rate Board.

Rate Board established

599(1) The Automobile Insurance Rate Board is established consisting of

- (a) at least 3 but not more than 7 members appointed by the Lieutenant Governor in Council,
- (b) a consumer representative appointed by the Minister, and
- (c) the Superintendent.

(2) The consumer representative referred to in subsection (1)(b)

- (a) must have expertise and experience in consumer issues in the area of automobile insurance, and
- (b) must not be
 - (i) an adjuster,
 - (ii) a director or officer of a provincial company,
 - (iii) a director or officer of an extra-provincial company,
 - (iv) a director or officer of an extra-provincial Crown insurer or of an affiliate of an extra-provincial Crown insurer,
 - (v) a director or officer of a federally authorized company,

- (vi) a director or officer of a financial institution,
- (vii) an insurance agent,
- (viii) a director or officer of a life company,
- (ix) a director or officer of a mutual provincial company,
- (x) a director or officer of a property and casualty company,
or
- (xi) a special broker.

(3) The Superintendent is a non-voting member of the Board.

(4) The Lieutenant Governor in Council may

- (a) appoint one of the members of the Board, other than the Superintendent, as chair and another as vice-chair, and
- (b) fix the remuneration and provide for the payment of expenses to the members who are not employees of the Government.

(5) The term of office of a member of the Board referred to in subsection (1)(a) must not exceed 3 years.

(6) A member of the Board referred to in subsection (1)(a) may be reappointed for 2 additional terms of office.

(7) Despite subsection (6), the chair of the Board is always eligible to be reappointed as chair.

(8) A person appointed as a member of the Board continues to hold office after the expiry of the member's term until the member is reappointed, the member's successor is appointed or 12 months has elapsed, whichever occurs first.

(9) Subject to the approval of the Lieutenant Governor in Council, the Board may from time to time appoint one or more persons having special technical or other knowledge to inquire into and report to the Board in respect of any matter before the Board or in respect of which the Board considers it necessary to have information for the proper carrying out of its duties and functions.

(10) A person appointed by the Board pursuant to subsection (9) must be paid the remuneration specified by the Lieutenant Governor in Council.

(11) A majority of the members of the Board constitutes a quorum for the purpose of exercising its powers and performing its duties and functions.

(12) An order, direction, approval or other instrument that the Board is permitted or required to make may be made on its behalf by the chair, the vice-chair or any other member of the Board.

(13) An order, direction, approval or other instrument purporting to be signed by the chair, the vice-chair or a member of the Board on behalf of the Board is admissible in evidence in any proceedings as proof, in the absence of evidence to the contrary,

(a) that the order, direction, approval or instrument is the act of the Board, and

(b) that the person signing it was authorized to do so

without proof of the appointment of the individual signing as a member of the Board, or the individual's appointment as chair or vice-chair, as the case may be, or of the individual's signature.

(14) The Board may make rules governing its procedures.

(15) The *Regulations Act* does not apply to rules made under subsection (14).

(16) Every member of the Board has the power of a commissioner under the *Public Inquiries Act*.

(17) In accordance with the *Public Service Act*, there may be appointed the staff and other persons required by the Board.

(18) The Lieutenant Governor in Council may make regulations authorizing the Board to charge and collect from licensed insurers of automobiles fees, levies or other assessments for the Board's operations and for matters under its administration, including, without limitation, regulations respecting the amount of the fees, levies and other assessments and the manner in which and the times at which they must be paid.

Powers and duties of Board

600(1) In addition to the powers conferred and duties imposed on the Board under this Act or the regulations, the Board must exercise and perform any other powers and duties assigned to it by the Minister or prescribed by the regulations.

(2) Despite anything in this Subpart, the Minister may, if the Minister considers it appropriate to do so, exercise any of the powers and perform any of the duties or functions of the Board under this Act.

(3) If there is an inconsistency or conflict between an action taken by the Board and an action taken by the Minister under subsection (2), the action taken by the Minister prevails.

Annual report

601(1) The Board must make and submit to the Minister an annual report on the operations of the Board.

(2) The Minister must lay the report before the Legislative Assembly if it is then sitting or, if it is not then sitting, within 15 days after the commencement of the next sitting.

Premiums for Basic Coverage

Premiums for basic coverage

602(1) The Board must, in accordance with the regulations, determine and set premiums for basic coverage annually, or for any shorter period prescribed by the regulations.

(2) Despite subsection (1), the Lieutenant Governor in Council may determine and set premiums for basic coverage for any period the Lieutenant Governor in Council considers appropriate.

(3) The premiums for basic coverage must be set by the Board or the Lieutenant Governor in Council, as the case may be, before the beginning of the period for which the premiums are effective.

(4) The Lieutenant Governor in Council may make regulations

- (a)** respecting the setting of premiums for basic coverage, including, without limitation, regulations

- (i) establishing or providing for the manner of establishing criteria to be applied in setting the premiums;
 - (ii) governing the method of setting the premiums based on the criteria established under subclause (i);
- (b) respecting the refund or credit of any amounts paid for basic coverage under contracts made or renewed before or after, or in effect on, the coming into force of this section, including, without limitation, regulations respecting the contracts in respect of which a refund or credit is to be made, the amount of the refund or credit and the manner in which insurers must provide the refund or credit;
 - (c) requiring insurers to provide reports and information to the Board, including, without limitation, regulations respecting the nature and contents of the reports or information to be provided, the form in which the reports or information is to be provided and the times at which the reports or information is to be provided;
 - (d) respecting the use and confidentiality of the reports and information referred to in clause (c);
 - (e) governing any transitional matter concerning the application of this section in respect of matters dealt with under this section, including, without limitation, regulations governing the application of this section in respect of contracts in effect when this section comes into force;
 - (f) providing for any other matter that the Lieutenant Governor in Council considers advisable for carrying out the purpose and intent of this section.
- (5) Nothing in this section precludes an insurer from charging a premium for basic coverage that is less than the corresponding premium for basic coverage established by the Board or the Lieutenant Governor in Council, as the case may be.

Discounts and surcharges

603 The Lieutenant Governor in Council may make regulations respecting discounts and surcharges on premiums for basic coverage, including, without limitation, regulations

- (a) establishing or providing for the manner of establishing criteria to be applied in calculating the amount or level of discounts and surcharges;
- (b) governing the method of calculating the amount or level of discounts and surcharges based on the criteria established under clause (a);
- (c) governing any transitional matter concerning the application of this section in respect of matters dealt with under this section;
- (d) providing for any other matter that the Lieutenant Governor in Council considers advisable for carrying out the purpose and intent of this section.

Procedures

604(1) The Superintendent may establish written procedures to be followed by insurers in determining the amount payable for basic coverage by an insured or an applicant for a contract based on

- (a) the relevant amount of the premium for basic coverage determined pursuant to section 602, and
- (b) the amount of any discount or surcharge on that premium determined pursuant to section 603.

(2) The *Regulations Act* does not apply to written procedures established under subsection (1).

Prohibition

605 No insurer may charge or collect from an insured or an applicant for a contract an amount for basic coverage that is greater than the relevant premium determined pursuant to section 602 less any discount or plus any surcharge on that premium determined pursuant to section 603.

Premiums for Additional Coverage

Premiums for additional coverage

606(1) Every licensed insurer of automobiles must, in accordance with the regulations, file with the Board the schedule of premiums it proposes to charge for additional coverage.

(2) No insurer may charge the proposed premiums for additional coverage unless the premiums have first been filed with the Board.

Review of premiums for additional coverage

607(1) The Board must, after an insurer has filed its schedule of premiums for additional coverage with the Board under section 606, review those premiums and if it is of the opinion that any one or more of the premiums are not based on appropriate actuarial principles, the Board may report the matter to the Minister.

(2) Despite subsection (1) and section 606, the Lieutenant Governor in Council may make regulations respecting the approval of premiums for additional coverage.

Regulations

608 The Lieutenant Governor in Council may make regulations

- (a) respecting annual reports under section 601;
- (b) respecting the filing with the Board of a schedule of premiums for additional coverage under section 606;
- (c) respecting the period of time during which the Board must review a schedule of premiums for additional coverage filed with the Board under section 606;
- (d) requiring an insurer to give notice to the Registrar of Motor Vehicle Services whenever a contract is terminated, cancelled or not renewed, including regulations respecting the form and manner in which the notice must be given;
- (e) governing or otherwise respecting any matter related to premiums, charges, surcharges, discounts or other incentives related to automobile insurance;
- (f) respecting the refund or credit of any amounts paid for additional coverage under contracts made or renewed before or after, or in effect on, the coming into force of this section, including, without limitation, regulations respecting the contracts in respect of which a refund or credit is to be made, the amount of the refund or credit and the manner in which insurers must provide the refund or credit;
- (g) respecting any matter that is to be prescribed under this Subpart;

- (h) defining for the purposes of this Subpart and the regulations made under this Subpart any term or expression used in this Subpart that is not defined in this Act.

Application of Government approved industry plan

609(1) An insurer licensed under this Act to carry on automobile insurance must participate in and is subject to the terms and conditions of any Government approved industry plan to ensure a market for automobile insurance for all owners of automobiles in Alberta and for operators of automobiles in Alberta who hold operator's licences issued under the *Traffic Safety Act* or under any similar legislation of another province or territory.

(2) A copy of the constitution, bylaws, rules and regulations of a proposed Government approved industry plan must be filed with the Superintendent for approval.

(3) On acceptance of the filing and approval by the Superintendent under subsection (2), the plan is deemed to be a Government approved industry plan to ensure a market for automobile insurance for all owners of automobiles in Alberta and for operators of automobiles in Alberta who hold operator's licences issued under the *Traffic Safety Act* or under any similar legislation of another province or territory.

(4) A copy of a proposed change to be made in the constitution, bylaws, rules or regulations of a Government approved industry plan or a notice of termination of a plan must be filed with the Superintendent at least 15 days before the change or termination is proposed to be effective, and that change or termination must not take place unless approved by the Superintendent.

(5) When an insurance agent receives an application and effects coverage under a Government approved industry plan by binding a risk, the agent is bound by the applicable terms and conditions of the plan in existence at that time for the duration of the coverage so placed.

(6) The Lieutenant Governor in Council may make regulations

- (a) governing the operation of a Government approved industry plan;

- (b) determining the amounts to be paid by each insurer for the operation of a Government approved industry plan;
- (c) providing for any other matter that the Lieutenant Governor in Council considers advisable for carrying out the purpose and intent of this section.

Premium freeze

610(1) In this section,

- (a) “insured” includes an applicant for a contract;
- (b) “insurer” includes a servicing carrier under a Government approved industry plan referred to in section 609;
- (c) “order” includes any directions given by the Superintendent pursuant to subsection (5) in respect of an order made under subsection (2);
- (d) “premium” means a premium for automobile insurance and includes any rates, fees, surcharges or other amounts defined or otherwise described as a premium in an order made under subsection (2);
- (e) “rating program” means the rules, criteria, policies or guidelines of any nature used or adopted by an insurer to determine the premiums to be charged to an insured for automobile insurance.

(2) The Lieutenant Governor in Council may by order, effective on the date or for the period provided for in the order, freeze premiums prescribed or otherwise described in the order at the levels prescribed or otherwise described in the order.

(3) Without limiting the generality of subsection (2), an order made under subsection (2) may

- (a) be made retroactive to the extent set out or otherwise provided for in the order;
- (b) exempt in whole or in part a contract or class of contracts from the application of the order;
- (c) exempt in whole or in part an automobile or class of automobiles from the application of the order;

- (d) exempt in whole or in part an insurer or class of insurers from the application of the order;
- (e) prescribe or otherwise describe the premiums and the levels of premiums to which the order applies;
- (f) prohibit an insurer from charging premiums in excess of the premiums provided for under the order;
- (g) contain provisions specifying the manner or method or the procedures to be used by an insurer to determine premiums for contracts made or renewed after the effective date of the order, including provisions suspending or modifying the insurer's rating program or any part of the insurer's rating program;
- (h) suspend or modify the application or operation of any one or more provisions of this Act during any period that the order is in effect;
- (i) suspend or modify any decision of the Automobile Insurance Rate Board;
- (j) be specific or general in its application;
- (k) define or otherwise describe rates, fees, surcharges or other amounts as premiums for the purpose of the order;
- (l) contain provisions
 - (i) requiring an insurer to reimburse or otherwise provide a refund or credit to an insured for any part of any premiums paid by the insured as a result of the insurer's non-compliance with the order, and
 - (ii) specifying the manner in which and the time at which any reimbursement, refund or credit of those premiums must be made;
- (m) define any word or term used in this section that is not otherwise defined in this section;
- (n) include any other provisions that the Lieutenant Governor in Council considers necessary or advisable for carrying out the purpose and intent of this section.

(4) An order made under subsection (2)

- (a) is in effect for any period stated in the order, and
- (b) may be renewed for any further period or periods the Lieutenant Governor in Council considers appropriate.

(5) The Superintendent may give directions to an insurer with respect to an order made under subsection (2), including, without limitation, directions with respect to

- (a) determining premiums during the period for which the order is in effect, and
- (b) the application of the insurer's rating program in respect of premiums to which the order applies,

for the purposes of ensuring that the order is carried out within the spirit and intent of this section and the order.

(6) Section 789 applies to an order made under subsection (2).

(7) The *Regulations Act* does not apply to an order made under subsection (2).

Withdrawal from business

611(1) For the purposes of this section, an insurer is withdrawing from the business of automobile insurance if the insurer does anything that results or is likely to result in a significant reduction in the amount of premiums written by the insurer for automobile insurance in any part of Alberta, including any of the following actions that have or are likely to have that result:

- (a) refusing to process applications for automobile insurance;
- (b) refusing to issue a contract;
- (c) refusing to renew a contract;
- (d) terminating a contract;
- (e) cancelling a contract;
- (f) refusing to provide any coverage or endorsement in respect of a contract;

- (g) refusing to continue any coverage or endorsement in respect of a contract;
- (h) taking actions that directly or indirectly result in termination of contracts between the insurer and the insurance agents and insurance brokers who solicit or negotiate contracts on behalf of the insurer;
- (i) reducing the ability of insurance agents or insurance brokers to solicit or negotiate contracts on behalf of the insurer;
- (j) reducing the insurer's ability to act as a servicing carrier or ceasing to act as a servicing carrier under a Government approved industry plan referred to in section 609;
- (k) engaging in any activity, or failing to act, as prescribed or otherwise described in the regulations.

(2) An insurer must not withdraw from the business of automobile insurance except in accordance with this section.

(3) An insurer that intends to withdraw from the business of automobile insurance must file with the Superintendent a notice in the form prescribed by the Superintendent.

(4) The notice must specify the date that the insurer intends to withdraw from the business of automobile insurance and must be filed at least 180 days before that date.

(5) The Superintendent may require the insurer to provide the information, material and evidence that the Superintendent considers necessary in addition to the information, material and evidence required to be provided in the notice.

(6) Except as otherwise directed by the Superintendent, an insurer who files a notice under subsection (3) must not, after the date of withdrawal specified in the notice or any other date of withdrawal provided for in subsection (7), issue any contracts or renew any existing contracts.

(7) The Superintendent may

- (a) authorize the insurer to withdraw from the business of automobile insurance before the date specified in the notice under subsection (4), or

- (b) prohibit the insurer from withdrawing from the business of automobile insurance until a date specified by the Superintendent that is not later than 90 days after the date specified in the notice under subsection (4).

(8) Except as otherwise directed by the Superintendent, an insurer that withdraws from the business of automobile insurance pursuant to this section may not, for a period prescribed in the regulations, issue contracts or otherwise carry on the business of automobile insurance.

(9) The Lieutenant Governor in Council may make regulations prescribing or otherwise describing any activity or failure to act for the purposes of subsection (1)(k).

(10) An insurer who fails to comply with a requirement of this section is guilty of an offence and liable to a fine of not more than \$100 000.

Dispute resolution

612(1) In this section, “complaint” means any complaint or issue that an insured or an applicant for a contract has with an insurer, an insurance agent or an insurance broker with respect to

- (a) premiums,
- (b) the basis on which a premium was determined,
- (c) the availability of insurance,
- (d) the taking of adverse contractual action referred to in section 555,
- (e) fault as determined by an insurer in relation to a claim, or
- (f) any matter not referred to in clauses (a) to (e) prescribed or otherwise described in the regulations,

but does not include, in respect of an accident, any matter concerning the determination of liability or the amount of damages where an action has been commenced or is likely to be commenced in respect of that accident.

(2) The Lieutenant Governor in Council may make regulations providing for one or more dispute resolution systems or processes

by means of which complaints may be resolved or otherwise dealt with and, without restricting the generality of the foregoing, may make regulations

- (a) prescribing or otherwise describing, for the purposes of subsection (1)(f), any other matter for which a dispute resolution system or process may be used;
- (b) governing the procedures to be followed or otherwise used in making and resolving or attempting to resolve a complaint;
- (c) governing the mechanisms to be used under the dispute resolution system or process, including
 - (i) the appointment and use of committees or other bodies to deal with complaints;
 - (ii) the use of mediation and the appointment of mediators;
 - (iii) the use of arbitration and the appointment of arbitrators;
- (d) governing the duties, functions and powers of the Superintendent, if any, in respect of a dispute resolution system or process;
- (e) governing the remedies available under a dispute resolution system or process;
- (f) providing for any matter that the Lieutenant Governor in Council considers advisable for carrying out the purpose and intent of this section.

Subpart 3

Fraternal Societies

Definitions

613 In this Subpart,

- (a) “contract” means a contract of insurance;
- (b) “member” means a member of a fraternal society who is resident in Alberta.

Policy

614(1) When a person becomes a member of a fraternal society, the society must provide the member with a policy that contains or that has attached to it all the terms and conditions of the contract.

(2) If the terms and conditions of the contract between a fraternal society and its members are changed, deleted or added to, the society must as soon as practicable provide its members with a notice that contains the change, deletion or addition.

(3) A fraternal society shall not enforce a term or condition of a contract to the prejudice of a member or a beneficiary unless

- (a) a copy of the term or condition has been provided to the member, or
- (b) the society has made reasonable attempts to provide a copy of the term or condition to the member.

(4) The following provision must be printed in every policy in conspicuous bold type:

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.

(5) This section does not apply to a fraternal society that issues a contract of group insurance to a person representing the members of the society.

Group insurance policy

615(1) When a person becomes a member of a fraternal society that issues a contract of group insurance to a person representing the members of the society, the society must provide the member covered under the group insurance policy with a summary of the insurance benefits provided by the contract of group insurance.

(2) If the benefits under a contract of group insurance referred to in subsection (1) are changed, deleted or added to, the society must as

soon as practicable provide its members with a notice of the change, deletion or addition.

Rules deliverable on demand

616(1) In this section, “insurance fund”, in respect of a fraternal society, includes all money, securities for money and assets appropriated by the rules of the society to the payment of insurance liabilities or appropriated to the management of the insurance branch or department or division of the society, or otherwise legally available for insurance liabilities, but does not include funds of a trade union under the *Labour Relations Code* or under the *Public Service Employee Relations Act* appropriated to or applicable for the voluntary assistance of wage-earners unemployed or on strike.

(2) On payment of a reasonable fee, a fraternal society must deliver a copy of all rules of the society relating to its insurance contracts and to the management and application of its insurance fund to any person requiring it.

(3) An officer or agent of a fraternal society shall not, with intent to mislead or defraud, give to any person a copy of rules that are not in force on the pretence that they are the rules then in force.

Member’s liability

617(1) The liabilities of a member under the member’s contract are at any date limited to the assessments, fees and dues that became payable while the person was a member of the society and of which notice has been given in accordance with the constitution and rules of the society.

(2) A member may at any time withdraw from the society by delivering or sending by registered mail to the society notice in writing of the member’s intention to withdraw and by paying or tendering the assessments, fees and dues referred to in subsection (1).

(3) This section is subject to any rules to the contrary approved by the Superintendent.

Notice to members

618(1) Subject to subsection (2), any notice required to be given to a member for any purpose of this Act or of the rules of the fraternal society may be given by written or printed notice

delivered or sent to the member by registered mail or left at the member's place of residence or business last known to the society or published in the official paper of the society.

(2) A notice of the reduction of any benefit payable under a contract or of the increase of the premium payable under the contract must be sent by registered mail to the member at the member's place of residence or of business last known to the society.

Subpart 4 Hail Insurance

Definitions

619 In this Subpart,

- (a) "contract" means a contract of hail insurance;
- (b) "crop" means a growing crop.

Application of Subpart

620 This Subpart applies to hail insurance and to every insurer carrying on the business of hail insurance in Alberta.

Crops insurable

621(1) Every insurer may, within the limits and subject to the restrictions set out in its licence, insure or reinsure crops.

(2) The insurer may by an endorsement on a policy, and in consideration of an additional premium, insure a crop

- (a) for any period during which it is lying in windrows, or
- (b) for any period after the crop is desiccated.

(3) The insurer may by an endorsement on a policy, and in consideration of an additional premium, insure a crop against loss or damage incidental to crops arising from other causes, and in that case the statutory conditions must be read with those modifications necessary to give effect to the terms and conditions of the endorsement.

Insurable interest

622(1) A contract is void if, at the time at which it would otherwise take effect, the insured does not have an insurable interest in the insured crop.

(2) If an insured has an insurable interest in the insured crop when the contract takes effect, it is not necessary for the validity of the contract that any person to whom the insurance money is payable, whether by the terms of the contract or by assignment, have an insurable interest in the crop.

Application for contract

623(1) No insurer may effect a contract unless the insurer has received an application for insurance signed by the applicant or the applicant's agent.

(2) An application forms part of the contract and the insurer must give a copy of it to the applicant at the time the application is completed.

(3) The application must set out

- (a) the name and address of the applicant,
- (b) an itemized description of the location and area of each part of the crop to be insured and the amount of insurance applied for on each hectare,
- (c) whether the crop has been damaged by hail prior to the time of the application,
- (d) the insurable interest of the applicant, and
- (e) the name of the person to whom the insurance money is payable.

Information to appear on face of policy

624 Every policy must include the following:

- (a) the name of the insurer;
- (b) the name of the insured;
- (c) the name of the person to whom the insurance money is payable;

- (d) the premium for the insurance;
- (e) the subject-matter of the insurance;
- (f) the maximum amount that the insurer contracts to pay;
- (g) the date of the commencement of liability;
- (h) the event on the happening of which payment is to be made;
- (i) the term of the contract.

Additional information required

625 There must appear on every application and on every policy in a prominent position and in prominent type the name and address of the insurer's head or branch office or general agency from which the policy is to be or is issued.

Dispute resolution

626 An insurer must give notice in writing to an insured of the availability of the dispute resolution process set out in Statutory Condition 15 set out in section 636 within 2 days after the insurer becomes aware that there is a disagreement between the insurer and the insured that the contract requires to be determined by a dispute resolution process.

Delivery of application to insurer

627 Every insurance agent who takes an application on behalf of an insurer must deliver it to the insurer or the general agency of the insurer or forward it to the insurer by mail or by electronic means approved by the insurer not later than the day following the day on which the application is taken.

Effective date of contract

628(1) When an insurance agent of an insurer delivers an application for insurance to the insurer or the general agency of the insurer and tenders payment of the premium with the application, a contract in accordance with the application takes effect at 12 noon of the day following the day the insurer receives the application.

(2) The insurer may decline the application on its receipt, and if the application is declined the insurer must forthwith give notice of that decision by registered letter to the applicant at the applicant's address as given in the application, or by electronic means agreed

to by the applicant, and to the insurance agent who delivered the application, in which case

- (a) the contract referred to in subsection (1) continues in force only until 12 noon of the day following the day the applicant receives the notice, and
- (b) the insurer must refund the premium to the applicant after deducting any earned premium for time on risk.

(3) Despite subsection (2), notice in writing that the application has been declined may be personally delivered to the applicant by the insurance agent along with a refund of the unearned premium, and in that event the contract referred to in subsection (1) continues in force only until 12 noon of the day following the day the applicant receives the notice.

(4) If the insurer does not notify the applicant that the application has been declined, the insurer is deemed to have accepted the application.

Incorrect amount of premium

629 If the amount of premium tendered with an application is not the correct amount,

- (a) the insurance must, unless readjusted before loss occurs, be either reduced or increased to the amount the premium actually tendered would pay for, according to the correct rate of premium applicable to the risk, and
- (b) the insurer must immediately notify the applicant in writing of the adjustment.

Refund of premium

630(1) If the actual area of the insured crop under any item of a policy is found to be less than the area mentioned in the application under that item, the insurer must repay to the insured the premium paid on the excess area.

(2) If the actual area of the insured crop under any item of a policy is found to be greater than the area described in the application, the amount of insurance on each hectare is reduced on a prorated basis in its relation to the actual area, unless the area insured is clearly identified in the application or by a diagram in the application.

Policy in accordance with application

631 A policy issued to an insured is deemed to be in accordance with the application unless the insurer immediately gives notice to the insured in writing of the particulars in which the policy and application differ.

Expiration of hail insurance policies

632 If any portion of the insured crop is cut before the expiry date provided for in the contract, then, subject to section 621(2), the liability of the insurer ceases in respect of that portion when it is cut, and the insurance on each hectare of the remaining area continues until the crop on the remaining area is cut, but not beyond the expiry date.

Partial payment of loss clause

633 A policy may contain a partial payment of loss clause to the effect that the insurer is required to pay only an agreed proportion of any loss that is sustained or the amount of the loss after deduction of a sum specified in the policy, in either case not exceeding the amount of the insurance, in which case there must be printed or stamped on the first page of the policy in conspicuous bold type the words: "This policy contains a partial payment of loss clause."

Notice of cancellation or alteration

634 When a loss has, with the consent of the insurer, been made payable to some person other than the insured, the contract must not be cancelled or altered to the prejudice of that person without reasonable notice to that person by the insurer.

Adjustment of loss

635 When an adjustment of loss under a contract has been made, a copy of the adjustment, signed by the adjuster and the insured or the insured's agent, must be given to the insured or the insured's agent.

Statutory conditions

636 The conditions set out in this section

- (a) are deemed to be part of every contract in force in Alberta and must be printed on every policy under the heading "Statutory Conditions", and

- (b) no variation or omission of or addition to any statutory condition is binding on the insured.

Statutory Conditions

MISDESCRIPTION OR MISREPRESENTATION 1 If in an application the applicant falsely describes the location and area of the crop to the prejudice of the insurer or knowingly misrepresents or fails to disclose any fact required to be stated in the application, the insurance is void as to the item of the application in respect of which the misdescription, misrepresentation or omission is made.

WAIVER OF CONDITIONS 2 No term or condition of the contract is deemed to have been waived by the insurer, either in whole or in part, unless the waiver is clearly expressed in writing signed by or on behalf of the insurer.

OFFICER PRESUMED AN AGENT 3 Any officer or agent of the insurer who assumes on behalf of the insurer to enter into a written agreement relating to any matter connected with the insurance is deemed to be the agent of the insurer for the purpose.

INDEMNITY LIMITATION 4 No claimant is entitled to indemnity under the contract for any loss or damage that is found to be less than 5% of the crop on the area damaged by hail.

CONDITIONS OF INDEMNITY 5 No claimant is entitled to indemnity under the contract

- (a) when the crop is wholly destroyed by any cause other than hail,
- (b) when the crop is over-ripe, or
- (c) when the crop or any portion of the crop has been so injured by causes other than hail that the crop or any portion of the crop, as the case may be, would not yield profit over and above the actual cost of harvesting and marketing it.

NOTICE OF CLAIM OF LOSS 6(1) Any person claiming under the contract must give notice of claim of loss or damage in writing to the insurer or the general agency of the insurer from which the policy was issued within 3 days of the occurrence of loss, stating the number of the policy, the day and hour of the

storm, the estimated damage to each portion of the insured crop and the names of other insurers carrying insurance on the area damaged by hail.

(2) Despite subparagraph (1) of this condition, failure to give notice within the time referred to in that subparagraph does not, subject to Statutory Condition 9, invalidate the claim if it is shown that it was not reasonably possible to give notice within that time and that notice was given as soon as was reasonably possible.

RIGHT OF ACCESS OF INSURER 7 After any loss or damage to the insured crop, the insurer has an immediate right of access and entry by accredited representatives sufficient to enable them to survey and examine the crop and to make an estimate of the loss or damage.

INSURER AND INSURED TO ASCERTAIN

PERCENTAGE 8(1) Within 30 days after the receipt of notice of claim of loss or damage the insurer and the insured or their accredited representatives must together ascertain and agree on the percentage of loss or damage sustained on the area of the crop or any portion of the crop insured under any item of the policy.

(2) The amount of indemnity must be ascertained on the agreed percentage of the insurance on each hectare of the area sustaining loss or damage by hail, subject to any partial payment of loss clause contained in the policy or subject to the determination of the amount of the loss or damage by a dispute resolution process as provided in Statutory Condition 15.

(3) No account may be taken of the cost of cutting or threshing the portion of the crop not destroyed or damaged.

(4) The determination of the percentage of loss or damage may be deferred to a later date agreed on by the insurer and the insured.

PROOF OF LOSS 9(1) A person making a claim under the contract must, within 30 days after the occurrence of a loss or within 30 days after the deferred adjustment date, unless that time is extended by the insurer with notification to the insured, furnish a statutory declaration (in these conditions called the “proof of loss”) on a form furnished by the insurer, setting out the date and number of the policy, the date of the occurrence of the loss or damage, the location and area of the crop damaged, the estimated percentage of

loss or damage sustained on the area of the crop or any portion of the crop insured under any item of the policy and whether the crop was damaged by hail prior to the time of the application.

(2) If the claimant fails to furnish proof of loss, the claimant forfeits any claim under the contract.

(3) If the insurer, within 30 days after the occurrence of a loss referred to in subparagraph (1) of this condition, or at the time of the deferred adjustment, has ascertained the loss acceptably to the claimant or if the amount of loss has been determined by a dispute resolution process as provided in Statutory Condition 15, the insurer is deemed to have waived proof of loss unless proof of loss is requested by the insurer in writing.

PROOF OF LOSS MAY BE MADE BY AGENT OF INSURED 10 Proof of loss must be made by the insured even if the loss is payable to a third person, except that, in the case of the absence of the insured or the insured's inability to make proof of loss, proof of loss may be made by the insured's agent or by a person to whom any part of the insurance money is payable.

FRAUD OR FALSE STATEMENT 11 Any fraud or wilfully false statement in a proof of loss invalidates the claim of the person making proof of loss.

PAYMENT OF MONEY WITHIN PERIOD 12 The insurer must pay the insurance money for which it is liable under the contract within 60 days after proof of loss has been received by it or, when a dispute resolution process is conducted under Statutory Condition 15, within 30 days after the award is rendered by the representatives or umpire.

INSURED LIABLE FOR EXPENSES INCURRED 13 If the insured claims for loss or damage under the contract and it is found that the insured is not entitled to indemnity under the conditions of the contract, the insured is liable for the expenses incurred in the adjustment of the insured's claim.

CANCELLATION OF CONTRACT 14 The contract may be cancelled at any time by the insured by giving notice to that effect to the insurer or the general agency of the insurer from which the contract was issued, and the insurer must refund the excess of paid

premium above the customary short rate premium for the time the contract has been in force.

DISPUTE RESOLUTION 15(1) In the event of a disagreement as to the percentage of damage by hail to any of the insured growing crops, whether the right to recover on the contract is disputed or not, the percentage must, when so required by either party, be ascertained by a dispute resolution process, which must be conducted as follows:

- (a) the party desiring the dispute resolution process must within 3 days of the disagreement deliver or cause to be delivered by mail or otherwise to the other party a notice in writing requiring a dispute resolution process to be conducted and appointing a dispute resolution representative, who must act either alone or with a dispute resolution representative appointed by the other party to estimate the percentage of the damage;
- (b) not later than 3 days after receipt of a notice under clause (a) the other party may appoint a dispute resolution representative and, within that period, must notify the first party of the appointment by notice in writing delivered by mail or otherwise;
- (c) if a party, after receipt of written notice from the other party under clause (a), fails or refuses to appoint a dispute resolution representative within the time set out in clause (b), the percentage of damage must be estimated and determined by the representative appointed by the party giving notice;
- (d) where each party has appointed a dispute resolution representative, the representatives must together estimate the percentage of damage and if they fail to agree must submit their differences to an umpire, and the finding in writing of any 2 of them determines the percentage of the damage;
- (e) if
 - (i) the dispute resolution representatives fail to agree on an umpire within 15 days after their appointment, or

- (ii) the umpire fails or refuses to act or is incapable of acting or dies,

the Superintendent may appoint an umpire on the application of either representative;

- (f) an applicant under clause (e) must provide the Superintendent and the other dispute resolution representative with a notice of application in writing containing
 - (i) the names and contact information of 2 persons the applicant believes are capable of being an umpire, and
 - (ii) the credentials of the 2 persons;
- (g) the Superintendent must as soon as practicable after receiving a notice under clause (e) appoint an umpire from one of the names submitted by the applicant;
- (h) if only one dispute resolution representative has been appointed, the parties must share equally the representative's expenses;
- (i) if 2 dispute resolution representatives have been appointed, each party must pay the expense of the representative appointed by the party;
- (j) if an umpire is required, the parties must share equally the umpire's expenses;
- (k) the appraisal of damage must be conducted within 2 days of the date on which
 - (i) a dispute resolution representative is appointed under clause (b), or
 - (ii) if no dispute resolution representative is appointed under clause (b), the time for appointing a dispute resolution representative under clause (b) expires,

or at a later date as agreed on by the 2 dispute resolution representatives, if 2 representatives have been appointed;

- (l) if the dispute resolution representatives cannot agree on an extension of time under clause (k), the Superintendent may extend the time on the application of either representative.
- (2) An umpire is bound by the rules of procedural fairness in carrying out the umpire's functions under this Statutory Condition.

ACTION BROUGHT WITHIN TWO YEARS 16 An action or proceeding against the insurer in respect of loss or damage to the crop insured under the contract must be commenced not later than 2 years after the occurrence of the loss or damage.

ASSIGNMENT OR CHANGE OF PROPERTY 17 If the insured crop or the insurable interest of the insured in the insured crop is assigned without the permission of the insurer or the general agency of the insurer from which the contract was issued, the assignment is not binding on the insurer, but this condition does not apply to change of title by succession, by operation of law or by death.

Subpart 5 Life Insurance

Definitions

637 In this Subpart,

- (a) "application" means an application for insurance or for the reinstatement of insurance;
- (b) "beneficiary" means a person, other than the insured or the insured's personal representative, to whom or for whose benefit insurance money is made payable in a contract or by a declaration;
- (c) "blanket insurance" means group insurance that covers loss
 - (i) arising from specific hazards incidental to or defined by reference to a particular activity or activities, and
 - (ii) occurring during a limited or specified period not exceeding 30 days in duration;
- (d) "contract" means a contract of insurance;

- (e) “creditor’s group insurance” means insurance effected by a creditor under which the lives of a number of the creditor’s debtors are insured severally under a single contract;
- (f) “debtor insured” means a debtor whose life is insured under a contract of creditor’s group insurance;
- (g) “declaration”, except in sections 677 to 681, means an instrument signed by the insured
 - (i) with respect to which an endorsement is made on the policy,
 - (ii) that identifies the contract, or
 - (iii) that describes the insurance or insurance fund or a part of the insurance or insurance fund,

in which the insured

 - (iv) designates, or alters or revokes the designation of, the insured, the insured’s personal representative or a beneficiary as one to whom or for whose benefit insurance money is to be payable, or
 - (v) makes, alters or revokes an appointment under section 663(1) or a nomination referred to in section 669;
- (h) “family insurance” means insurance under which the lives of the insured and one or more persons related to the insured by blood, marriage or adoption or by virtue of an adult interdependent relationship 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, under which the lives of a number of persons are insured severally under a single contract between an insurer and an employer or other person;
- (j) “group life insured” means a person (the “primary person”) whose life is insured under a contract of group insurance, but does not include a person whose life is insured under the contract as a person dependent on or related to the primary person;

- (k) “instrument” includes a will;
- (l) “insurance” means life insurance;
- (m) “insured” means
 - (i) in the case of group insurance, in the provisions of this Subpart relating to the designation of beneficiaries or personal representatives as recipients of insurance money and their rights and status, the group life insured, and
 - (ii) in all other cases, the person who makes a contract with an insurer.

Application of Subpart 1

638 Sections 515, 521, 527, 533, 537 and 547 apply to contracts of life insurance.

Application of Subpart

Annuity deemed life insurance

639 For the purposes of this Subpart, an undertaking entered into by an insurer to provide an annuity, or what would be an annuity except that the periodic payments may be unequal in amount, is deemed to be and always to have been life insurance whether the annuity is for

- (a) a term certain,
- (b) a term dependent either solely or partly on a human life, or
- (c) a term dependent solely or partly on the happening of an event not related to a human life.

Application of Subpart

640(1) Despite any agreement, condition or stipulation to the contrary, but subject to a regulation made under section 749, this Subpart applies to a contract made in Alberta on or after July 1, 1962 and, subject to subsections (2) and (3), applies to a contract made in Alberta before that date.

(2) The rights and interests of a beneficiary for value under a contract that was in force immediately before July 1, 1962 are those provided in Part 6 of the Act then in force.

(3) If the person who would have been entitled to the payment of insurance money if the money had become payable immediately before July 1, 1962 was a preferred beneficiary within the meaning of Part 6 of the Act then in force, the insured must not, except in accordance with that Part,

- (a) alter or revoke the designation of a beneficiary, or
- (b) assign, exercise rights under or in respect of, surrender or otherwise deal with the contract,

but this subsection does not apply after a time at which the insurance money, if it were then payable, would be payable wholly to a person other than a preferred beneficiary within the meaning of that Part.

Application of Subpart

641 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 Subpart applies in determining

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

Issuance and Contents of Policy

Issuance of policy

642(1) An insurer entering into a contract must

- (a) issue a policy, and
- (b) furnish to the insured the policy and a copy of the insured's application.

(2) Subject to subsection (3), the provisions in

- (a) the application,
- (b) the policy,
- (c) any document attached to the policy when issued, and
- (d) any amendment to the contract agreed on in writing after the policy is issued

constitute the entire contract.

(3) In the case of a contract made by a fraternal society, the policy, the Act or instrument of incorporation of the society, its constitution, bylaws 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.

(4) Except in the case of a contract of group insurance or of creditor's group insurance, an insurer, on request, must furnish to the insured or a claimant under the contract a copy of

- (a) the entire contract as set out in subsection (2) or (3), as applicable, and
- (b) any written statement or other record provided to the insurer as evidence of insurability under the contract.

(5) In the case of a contract of group insurance, an insurer

- (a) on request, must furnish to a group life insured or claimant under the contract a copy of
 - (i) the group life insured's application, and
 - (ii) any written statement or other record, not otherwise part of the application, provided to the insurer as evidence of the insurability of the group life insured under the contract;
- (b) on request and reasonable notice, must permit a group life insured or claimant under the contract to examine, and must furnish to that person, a copy of the policy of group insurance.

(6) In the case of a contract of creditor's group insurance, an insurer,

- (a) on request, must furnish to a debtor insured or claimant under the contract a copy of
 - (i) the debtor insured's application, and
 - (ii) any written statement or other record, not otherwise part of the application, provided to the insurer as evidence of the insurability of the debtor insured under the contract;
- (b) on request and reasonable notice, must permit a debtor insured or claimant under the contract to examine, and must furnish to that person, a copy of the policy of creditor's group insurance.

(7) An insurer may charge a reasonable fee to cover its expenses in furnishing copies of documents under subsection (4), (5) or (6), other than the first copy furnished to each person.

(8) Access to the documents described in subsections (5)(b) and (6)(b) does not extend

- (a) to information contained in those documents that would reveal personal information, as defined in the *Personal Information Protection Act*, about a person without that person's consent, other than information about
 - (i) the group life insured or debtor insured in respect of whom the claim is made, or
 - (ii) the person who requests the information,

or

- (b) to information prescribed by the regulations.

(9) A claimant's access to documents under subsections (4) to (6) extends only to information that is relevant to

- (a) a claim under the contract, or
- (b) a denial of such a claim.

Particulars in policy

643(1) This section does not apply to a contract

- (a) of group insurance,
- (b) of creditor's group insurance, or
- (c) made by a fraternal society.

(2) An insurer must set out in the policy the following:

- (a) the name or a sufficient description of the insured and of the person whose life is insured;
- (b) the amount, or the method of determining the amount, of the insurance money payable, and the conditions under which it becomes payable;
- (c) 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;
- (d) whether the contract provides for participation in a distribution of surplus or profits that may be declared by the insurer;
- (e) the conditions on which the contract may be reinstated if it lapses;
- (f) the options, if any,
 - (i) of surrendering the contract for cash,
 - (ii) of obtaining a loan or an advance payment of the insurance money, and
 - (iii) of obtaining paid-up or extended insurance;
- (g) the following statement:

Every action or proceeding against an insurer for the recovery of insurance money payable under the contract is absolutely barred unless commenced within the time set out in the *Insurance Act*.

(3) If a policy contains a provision removing or restricting the right of the insured to designate persons to whom or for whose benefit insurance money is to be payable, the front page of the policy must include the following statement in conspicuous bold type:

This policy contains a provision removing or restricting the right of the insured to designate persons to whom or for whose benefit insurance money is to be payable.

Particulars in group policy

644 In the case of a contract of group insurance or of creditor's group insurance, an insurer must set out in the policy the following:

- (a) the name or a sufficient description of the insured;
- (b) the method of determining the persons whose lives are insured;
- (c) the amount, or the method of determining the amount, of the insurance money payable, and the conditions under which it becomes payable;
- (d) the period of grace, if any, within which the premium may be paid;
- (e) whether the contract provides for participation in a distribution of surplus or profits that may be declared by the insurer;
- (f) in the case of a contract of group insurance, any provision removing or restricting the right of a group life insured to designate persons to whom or for whose benefit insurance money is to be payable;
- (g) in the case of a contract of group insurance that replaces another contract of group insurance on some or all of the group life insured under the replaced contract, whether a designation of a group life insured, a group life insured's personal representative or a beneficiary as one to whom or for whose benefit insurance money is to be payable under the replaced contract applies to the replacing contract;
- (h) the following statement:

Every action or proceeding against an insurer for the recovery of insurance money payable under the contract is absolutely barred unless commenced within the time set out in the *Insurance Act*.

Particulars in group certificate

645(1) In the case of a contract of group insurance or of creditor's group insurance, an insurer must issue, for delivery by the insured to each group life insured or debtor insured, a certificate or other document in which are set out the following:

- (a) the name of the insurer and a sufficient identification of the contract;
- (b) the amount, or the method of determining the amount, of insurance on
 - (i) the group life insured and any person whose life is insured under the contract as a person dependent on or related to the group life insured, or
 - (ii) the debtor insured;
- (c) the circumstances in which the insurance terminates and the rights, if any, on termination of the insurance of
 - (i) the group life insured and any person whose life is insured under the contract as a person dependent on or related to the group life insured, or
 - (ii) the debtor insured;
- (d) in the case of a contract of group insurance that contains a provision removing or restricting the right of the group life insured to designate persons to whom or for whose benefit insurance money is to be payable,
 - (i) the method of determining the persons to whom or for whose benefit the insurance money is or may be payable, and
 - (ii) the following statement in conspicuous bold type:

This policy contains a provision removing or restricting the right of the group life insured to

designate persons to whom or for whose benefit insurance money is to be payable.

- (e) in the case of a contract of group insurance that replaces another contract of group insurance on some or all of the group life insured under the replaced contract, whether a designation of a group life insured, a group life insured's personal representative or a beneficiary as one to whom or for whose benefit insurance money is to be payable under the replaced contract applies to the replacing contract;
- (f) the rights of the group life insured, debtor insured or a claimant under the contract to obtain copies of documents under section 642(5) or (6);
- (g) the following statement:

Every action or proceeding against an insurer for the recovery of insurance money payable under the contract is absolutely barred unless commenced within the time set out in the *Insurance Act*.

- (2) This section does not apply to a contract of blanket insurance.

Formation of Contract

Lack of insurable interest

646(1) Subject to subsection (2), if 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 whose life is insured has consented in writing to the insurance being placed on his or her life.

(3) If the person whose life is insured is under the age of 16 years, consent to insurance being placed on the person's life may be given by one of his or her guardians within the meaning of Part 2 of the *Family Law Act*.

Persons insurable

647 Without restricting the meaning of “insurable interest”, a person, in this section called the “primary person”, has an insurable interest

- (a) in the case of a primary person who is a natural person, in his or her own life and the lives of
 - (i) the primary person’s child or grandchild,
 - (ii) the primary person’s spouse or adult interdependent partner,
 - (iii) a person on whom the primary person is wholly or partly dependent for, or from whom the primary person is receiving, support or education,
 - (iv) the primary person’s employee, and
 - (v) a person in the duration of whose life the primary person has a pecuniary interest,
- and
- (b) in the case of a primary person that is not a natural person, the lives of
 - (i) the primary person’s director, officer or employee, and
 - (ii) a person in the duration of whose life the primary person has a pecuniary interest.

Termination of contract by Court

648(1) If

- (a) a person whose life is insured under a contract is someone other than the insured, and
- (b) the person reasonably believes that the person’s life or health might be endangered by the insurance on that person’s life continuing under that contract,

on application of that person, the Court may make the orders the Court considers just in the circumstances.

(2) Without limiting subsection (1), the orders that the Court may make under subsection (1) include

- (a) an order that the insurance on that person's life under the contract be terminated in accordance with the terms of the contract other than any terms respecting notice of termination, and
- (b) an order that the amount of insurance under the contract on that person's life be reduced.

(3) An application under subsection (1) must be made on at least 30 days' notice to the insured, the beneficiary, the insurer and any other person the Court considers to have an interest in the contract.

(4) Despite subsection (3), if the Court considers it just to do so, it may dispense with the notice in the case of a person

- (a) other than the insurer, or
- (b) if the contract is a contract of group insurance or of creditor's group insurance, the insured.

(5) An order made under subsection (1) binds any person having an interest in the contract.

When contract takes effect

649(1) Subject to a provision to the contrary in the application or the policy, a contract does not take effect unless

- (a) the policy is delivered to an insured, the insured's assign or agent, or to a beneficiary,
- (b) payment of the initial premium is made to the insurer or its authorized agent, and
- (c) no change has taken place in the insurability of the life to be insured between the time the application was completed and the time the policy is delivered.

(2) When a policy is issued on the terms applied for and is delivered to an agent of the insurer for unconditional delivery to a person referred to in subsection (1)(a), it is deemed to have been delivered to the insured, but not to the prejudice of the insured.

Remittance for premium

650(1) If 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 the cheque, bill of exchange, promissory note or other promise to pay is not honoured according to its tenor, the premium or the part of the premium has not been paid.

(2) If a remittance for or on account of a premium is sent in a registered letter to an insurer and is received by the insurer, the remittance is deemed to have been received at the time of the registration of the letter.

Payment of premium by beneficiary

651(1) In this section, “industrial contract” means a contract of life insurance for an amount not exceeding \$2000, exclusive of any benefit, surplus, profit, dividend or bonus also payable under the contract, that provides for payment of premiums every 2 weeks or at shorter intervals or, if the premiums are usually collected at the home of the insured, at monthly intervals.

(2) Except in the case of group insurance or of creditor’s group insurance, an assignee of a contract, a beneficiary or a person acting on behalf of one of them or on behalf of the insured may pay any premium that the insured is entitled to pay.

(3) If a premium, other than the initial premium, is not paid at the time it is due, the premium may be paid within a period of grace of

- (a) 30 days or, in the case of an industrial contract, 28 days, after the day on which the premium is due, or
- (b) the number of days, if any, specified in the contract for payment of an overdue premium,

whichever is the longer period.

(4) If the happening of the event on which the insurance money becomes payable occurs during the period of grace and before the overdue premium is paid, the contract is deemed to be in effect as if the premium had been paid at the time it was due and, except in the case of group insurance or of creditor’s group insurance, the amount of the premium may be deducted from the insurance money.

Disclosure of material facts

652(1) An applicant for insurance and a person whose life is to be insured must each disclose to the insurer in the application, on a medical examination, if any, and in any written statements or answers furnished as evidence of insurability, every fact within the applicant's or person's knowledge that is material to the insurance and is not so disclosed by the other.

(2) Subject to section 653 and subsection (3), a failure to disclose, or a misrepresentation of, a fact referred to in subsection (1) renders the contract voidable by the insurer.

(3) A failure to disclose, or a misrepresentation of, a fact referred to in subsection (1) relating to evidence of insurability with respect to an application for

- (a) additional coverage under a contract,
- (b) an increase in insurance under a contract, or
- (c) any other change to insurance after the policy is issued,

renders the contract voidable by the insurer, but only in relation to the addition, increase or change.

Failure to disclose

653(1) This section does not apply

- (a) to a misstatement to an insurer of the age of a person whose life is insured, or
- (b) to insurance under which an insurer, as part of a contract, undertakes to pay insurance money or to provide other benefits in the event the person whose life is insured becomes disabled as a result of bodily injury or disease.

(2) Subject to subsection (3), if a contract, or an addition, increase or change referred to in section 652(3), has been in effect for 2 years during the lifetime of the person whose life is insured, a failure to disclose, or a misrepresentation of, a fact required by section 652 to be disclosed does not, in the absence of fraud, render the contract voidable.

(3) In the case of a contract of group insurance or of creditor's group insurance, a failure to disclose, or a misrepresentation of, a

fact required by section 652 to be disclosed in respect of a person whose life is insured under the contract does not render the contract voidable, but

- (a) if the failure to disclose or misrepresentation relates to evidence of insurability specifically requested by the insurer at the time of application for the insurance in respect of the person, the insurance in respect of that person is voidable by the insurer, and
- (b) if the failure to disclose or misrepresentation relates to evidence of insurability specifically requested by the insurer at the time of application for an addition, increase or change referred to in section 652(3) in respect of the person, the addition, increase or change in respect of that person is voidable by the insurer,

unless the insurance, addition, increase or change has been in effect for 2 years during the lifetime of that person, in which case the insurance, addition, increase or change is not, in the absence of fraud, voidable.

Non-disclosure and misrepresentation by insurer

654 If an insurer fails to disclose or misrepresents a fact material to the insurance, the contract is voidable by the insured, but in the absence of fraud the contract is not by reason of the failure or misrepresentation voidable after the contract has been in effect for 2 years.

Misstatement of age

655(1) This section does not apply to a contract of group insurance or of creditor's group insurance.

(2) Subject to subsection (3), if the age of a person whose life is insured is misstated to the insurer, the insurance money provided by the contract must be increased or decreased to the amount that would have been provided for the same premium at the correct age.

(3) If a contract limits insurable age and the correct age of the person whose life is insured exceeds that limit at the date of the application, the contract is voidable by the insurer for 5 years after the date the contract takes effect, but not afterwards, and only if

- (a) the person is alive, and

- (b) the insurer voids the contract within 60 days after it discovers the misstatement of age.

Misstatement of age in group insurance

656 In the case of a contract of group insurance or of creditor's group insurance, a misstatement to the insurer of the age of a person whose life is insured does not of itself render the contract voidable, and the provisions, if any, of the contract with respect to age or misstatement of age apply.

Suicide clause

657(1) If a contract contains an undertaking, express or implied, that insurance money will be paid if a person whose life is insured commits suicide, the undertaking is lawful and enforceable.

(2) If a contract provides that if a person whose life is insured commits suicide within a certain period of time the contract is void or the amount payable under it is reduced, if the contract lapses and is subsequently reinstated on one or more occasions, the period of time commences to run from the date of the latest reinstatement.

Reinstatement of contract

658(1) This section does not apply to a contract of group insurance or of creditor's group insurance or to a contract made by a fraternal society.

(2) If a contract lapses at the end of a period of grace because a premium due at the beginning of the period of grace was not paid, the contract may be reinstated by payment of the overdue premium within a further period of 30 days after the end of the period of grace, but only if the person whose life was insured under the contract is alive at the time payment is made.

(3) If a contract lapses and is not reinstated under subsection (2), the insurer must reinstate it if, within 2 years of the date the contract lapsed, the insured

- (a) applies for the reinstatement,
- (b) pays to the insurer all overdue premiums and other indebtedness under the contract together with interest not exceeding the rate prescribed under section 4(2) of the *Judgment Interest Act*, and

(c) produces evidence satisfactory to the insurer of the good health and insurability of the person whose life was insured.

(4) Subsections (2) and (3) do not apply if the cash surrender value has been paid or an option of taking paid-up or extended insurance has been exercised.

(5) Sections 652 and 653 apply, with any necessary modifications, to reinstatement of a contract.

Termination and replacement of group contract

659(1) If a contract of group insurance, or a benefit provision in a contract of group insurance, under which the insurer undertakes to pay insurance money or provide other benefits if a group life insured becomes disabled as a result of bodily injury or disease is terminated, the insurer continues, as though the contract or benefit provision had remained in full force and effect, to be liable to pay insurance money or provide benefits in respect of a group life insured for liability arising from an accident or disease that occurred before the termination of the contract or benefit provision if the disability is reported to the insurer within the 6-month period following the termination or a longer continuous period specified in the contract.

(2) Despite subsection (1), an insurer does not remain liable under a contract or benefit provision described in that subsection to pay insurance money or provide a benefit for the recurrence of a disability after both of the following occur:

- (a) the termination of the contract or benefit provision;
- (b) a continuous period of 6 months, or any longer period provided in the contract, during which the group life insured was not disabled.

(3) An insurer that is liable under subsection (1) to pay insurance money or provide a benefit as a result of the disability of a group life insured is not liable to pay the insurance money or provide the benefit for any period longer than the portion remaining, at the date the disability began, of the maximum period provided under the contract for the payment of insurance money or the provision of other benefits in respect of a disability of the group life insured.

(4) If a contract of group insurance, in this section called the “replacement contract”, is entered into within 31 days after the termination of another contract of group insurance, in this section called the “other contract”, and that replacement contract insures some or all of the same group life insured as the other contract,

- (a) the replacement contract is deemed to provide that any person who was insured under the other contract at the time of its termination is insured under the replacement contract from and after the termination of the other contract if
 - (i) the insurance on that person under the other contract terminated by reason only of the termination of the other contract, and
 - (ii) the person is a member of a class eligible for insurance under the replacement contract,

and

- (b) no person who was insured under the other contract at the time of its termination may be excluded from eligibility under the replacement contract by reason only of not being actively at work on the effective date of the replacement contract,

and despite subsection (1), if the replacement contract provides that insurance money or other benefits to be paid or provided under subsection (1) by the insurer of the other contract are to be paid instead under the replacement contract, the insurer of the other contract is not liable to pay that insurance money or provide those benefits.

Beneficiaries

Designation of beneficiary

660(1) Subject to subsection (4), an insured may in a contract or by a declaration designate the insured, the insured’s personal representative or a beneficiary as one to whom or for whose benefit insurance money is to be payable.

(2) Subject to section 661(1), an insured may by declaration alter or revoke a designation referred to in subsection (1).

(3) A designation in favour of the “heirs”, “next of kin” or “estate” of an insured, or the use of words having similar meaning in a designation, is deemed to be a designation of the personal representative of the insured.

(4) Subject to the regulations, an insurer may restrict or exclude in a contract the right of an insured to designate persons to whom or for whose benefit insurance money is to be payable.

(5) A contract of group insurance replacing another contract of group insurance on some or all of the group life insured under the replaced contract may provide that a designation applicable to the replaced contract of a group life insured, a group life insured’s personal representative or a beneficiary as one to whom or for whose benefit insurance money is to be payable is deemed to apply to the replacing contract.

(6) If a contract of group insurance replacing another contract of group insurance provides that a designation referred to in subsection (5) is deemed to apply to the replacing contract,

- (a) each certificate in respect of the replacing contract must indicate that the designation under the replaced contract has been carried forward and that the group life insured should review the existing designation to ensure it reflects the group life insured’s current intentions, and
- (b) as between the insurer under the replacing contract and a claimant under that contract, that insurer is liable to the claimant for any errors or omissions by the previous insurer in respect of the recording of the designation carried forward under the replacing contract.

(7) If a beneficiary becomes entitled to insurance money and all or part of that insurance money remains with the insurer under a settlement option provided for in the contract or permitted by the insurer, that portion of the insurance money remaining with the insurer is deemed to be insurance money held under a contract on the life of the beneficiary and, subject to the provisions of the settlement option, the beneficiary has the rights and interests of an insured with respect to the insurance money.

Irrevocable designation

661(1) An insured may in a contract or by a declaration, other than a declaration that is part of a will, filed with the insurer at its head or principal office in Canada during the lifetime of the person whose life is insured, designate a beneficiary irrevocably, and in that event the insured, while the beneficiary is living, may not alter or revoke the designation without the consent of the beneficiary, and the insurance money is not subject to the control of the insured or the claims of the insured's creditors and does not form part of the insured's estate.

(2) If an insured purports to designate a beneficiary irrevocably in a will or in a declaration that is not filed under subsection (1), the designation has the same effect as if the insured had not purported to make it irrevocable.

Designation in will

662(1) 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.

(2) Despite the *Wills Act*, a designation in a will is of no effect against a designation made later than the making of the will.

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

(4) If a designation is contained in an instrument that purports to be a will and the instrument, if it were valid as a will, would be revoked by operation of law or otherwise, the designation is revoked.

Trustee for beneficiary

663(1) 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.

(2) A payment made by an insurer to a trustee for a beneficiary discharges the insurer to the extent of the amount of the payment.

Predeceased or disclaiming beneficiary

664(1) If a beneficiary predeceases the person whose life is insured and no disposition of the share of the deceased beneficiary in the insurance money is provided for in the contract or by a declaration, the share is payable

- (a) to the surviving beneficiary,
- (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 the insured's personal representative.

(2) If 2 or more beneficiaries are designated otherwise than alternatively but no division of the insurance money is made, the insurance money is payable to them in equal shares.

(3) A beneficiary may disclaim the beneficiary's right to insurance money by filing notice in writing with the insurer at its head or principal office in Canada.

(4) A notice of disclaimer filed under subsection (3) is irrevocable.

(5) Subsection (1) applies in the case of a disclaiming beneficiary or in the case of a beneficiary determined by a court to be disentitled to insurance money as if the disclaiming or disentitled beneficiary predeceased the person whose life is insured.

Enforcement of payment by beneficiary or trustee

665 A beneficiary may enforce for the beneficiary's own benefit, and a trustee appointed pursuant to section 663 may enforce as trustee, the payment of insurance money made payable to the beneficiary or trustee in the contract or by a declaration in accordance with the provisions of the contract or declaration, but the insurer may set up any defence that it could have set up against the insured or the insured's personal representative.

Insurance money not part of estate

666(1) If a beneficiary is designated, any insurance money payable to the beneficiary is not, from the time of the happening of the event on which the insurance money 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 in favour of any one or more of a spouse or adult interdependent partner, child, grandchild or parent of a person whose life is insured, the insurance money and the rights and interests of the insured in the insurance money and in the contract are exempt from execution or seizure under the *Civil Enforcement Act* or any other law in force in Alberta.

Dealings with Contract

Assignment of insurance

667(1) If a beneficiary

- (a) is not designated irrevocably, or
- (b) is designated irrevocably but has attained the age of 18 years and consents,

the insured may assign, exercise rights under or in respect of, surrender or otherwise deal with the contract as provided in the contract or in this Subpart or as may be agreed on with the insurer.

(2) Despite section 661(1), if a beneficiary is designated irrevocably and has not consented as described in subsection (1)(b), the insured may exercise any rights in respect of the contract that are prescribed by regulation.

(3) Subject to the terms of a consent under subsection (1)(b) or an order of the Court under subsection (4), if there is an irrevocable designation of a beneficiary under a contract, a person acquiring an interest in the contract takes that interest subject to the rights of that beneficiary.

(4) When a beneficiary who is designated irrevocably is unable to provide consent under subsection (1)(b) because of legal incapacity, an insured may apply to the Court for an order permitting the insured to deal with the contract without that consent.

(5) The Court may grant an order under subsection (4) on any notice and terms it considers just.

Entitlement to dividends

668(1) Despite the irrevocable designation of a beneficiary, the insured is entitled, before his or her death, to the dividends or

bonuses declared on a contract unless the contract provides otherwise.

(2) Unless the insured directs otherwise, the insurer may apply the dividends or bonuses declared on the contract for the purpose of keeping the contract in force.

Third party policies

669(1) Despite the *Wills Act*, if in a contract or declaration it is provided that a person named in the contract or declaration has, on the death of the insured, the rights and interests of the insured in the contract,

- (a) the rights and interests of the insured in the contract do not, on the death of the insured, form part of the insured's estate, and
- (b) on the death of the insured, the person named in the contract or declaration has the rights and interests given to the insured by the contract and by this Subpart and is deemed to be the insured.

(2) If a contract or declaration referred to in subsection (1) provides that, on the death of the insured, 2 or more persons named in the contract or declaration have successively on the death of each of them the rights and interests of the insured in the contract, this section applies successively, with all necessary modifications, to each of those persons and their rights and interests in the contract.

(3) Despite a nomination referred to in subsection (1), the insured, before his or her death, may

- (a) assign, exercise rights under or in respect of, surrender or otherwise deal with the contract as if the nomination had not been made, and
- (b) subject to the terms of the contract, alter or revoke the nomination by declaration.

Effect of assignment

670(1) When an assignee of a contract gives notice in writing of the assignment to the insurer at its head or principal office in Canada, the assignee has priority of interest as against

- (a) an assignee other than one who gave notice earlier to the insurer of the assignment in the manner provided for in this subsection, and
- (b) a beneficiary other than one designated irrevocably as provided in section 661 before the assignee gave notice to the insurer of the assignment in the manner provided for in this subsection.

(2) If a contract is assigned as security, the rights of a beneficiary under the contract are affected only to the extent necessary to give effect to the rights and interests of the assignee.

(3) If a contract is assigned unconditionally and otherwise than as security, the assignee has all the rights and interests given to the insured by the contract and by this Subpart and is deemed to be the insured.

(4) Unless the document by which the contract is assigned specifies otherwise, an assignment described in subsection (3) made on or after the date this section comes into force revokes

- (a) a designation of a beneficiary made before or after that date and not made irrevocably, and
- (b) a nomination referred to in section 669 made before or after that date.

(5) A contract may provide that the rights or interests of the insured or, in the case of a contract of group insurance or of creditor's group insurance, of the group life insured or debtor insured, as the case may be, are not assignable.

Enforcement of right re group life insurance

671 A group life insured may, in his or her own name, enforce a right given to the group life insured under a contract, subject to any defence available to the insurer against the group life insured or the insured.

Enforcement of right re creditor's group insurance

672(1) A debtor insured or a debtor who is jointly liable for the debt with the debtor insured may enforce in his or her own name the creditor's rights in respect of a claim arising in relation to the

debtor insured, subject to any defence available to the insurer against the creditor or debtor insured.

(2) Subject to subsection (3), if an insurer pays insurance money in respect of a claim under subsection (1), the insurer must pay the insurance money to the creditor.

(3) If the debtor insured provides evidence satisfactory to the insurer that the insurance money exceeds the debt then owing to the creditor, the insurer may pay the excess directly to that debtor insured.

Capacity of minor

673 Except in respect of a minor's rights as beneficiary, a minor who has reached the age of 16 years has the capacity of an adult

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

Proceedings Under Contract

Proof of claim

674 If an insurer receives sufficient evidence of

- (a) the happening of the event on which insurance money becomes payable,
- (b) the age of the person whose life is insured,
- (c) the right of the claimant to receive the insurance money, and
- (d) the name and age of the beneficiary, if there is a beneficiary,

it must, within 30 days after receiving the evidence, pay the insurance money to the person entitled to it.

Payment of insurance money

675(1) Subject to subsections (3) to (5), insurance money is payable in Alberta.

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

(3) If a person entitled to receive insurance money is not resident in Alberta, the insurer may pay the insurance money to that person or to any person who is entitled to receive it on the person's behalf by the law of the jurisdiction in which the payee resides, and the payment discharges the insurer to the extent of the amount of the payment.

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

(5) If insurance money is payable under a contract to a deceased person who was not resident in Alberta at the date of the person's death or to that person's personal representative, the insurer may pay the insurance money to the deceased person's personal representative as appointed under the law of the jurisdiction in which the person was resident at the date of the person's death, and the payment discharges the insurer to the extent of the amount of the payment.

Action for payment

676 Regardless of the place where a contract was made, a claimant who is resident in 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 is so authorized at the time the action is brought.

Limitation of actions

677(1) Subject to subsections (2) and (5), an action or proceeding against an insurer for the recovery of insurance money payable in the event of a person's death must be commenced not later than the earlier of

- (a) 2 years after the date evidence is furnished under section 674, and
- (b) 6 years after the date of the death.

(2) Subject to subsection (5), if a declaration has been made under section 680, an action or proceeding referred to in subsection (1) must be commenced not later than 2 years after the date of the declaration.

(3) Subject to subsection (5), an action or proceeding against an insurer for the recovery of insurance money not referred to in subsection (1) must be commenced not later than 2 years after the date the claimant knew or ought to have known of the first instance of the loss or occurrence giving rise to the claim for insurance money.

(4) If insurance money is not payable unless a loss or occurrence continues for a period of time specified in the contract, the date of the first instance of the loss or occurrence for the purposes of subsection (3) is deemed to be the first day after the end of that period.

(5) An action or proceeding against an insurer for the recovery of insurance money payable on a periodic basis must be commenced not later than the later of

- (a) the last day of the applicable period under subsection (1), (2), (3) or (4) for commencing an action or proceeding, and
- (b) if insurance money was paid, 2 years after the date the next payment would have been payable had the insurer continued to make periodic payments.

Persons to whom insurance money payable

678(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 the instrument or order, it may make payment of the insurance money and is discharged to the extent of the amount of the payment as if there were no instrument or order.

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

Declaration as to sufficiency of proof

679 If an insurer admits the validity of the insurance but does not admit the sufficiency of the evidence required by section 674 and there is no other question in issue except a question under section 680, the insurer or the claimant may, before or after action is brought and on at least 30 days' notice, apply to the Court for a declaration as to the sufficiency of the evidence furnished, and the Court may make the declaration or may direct what further evidence is to be furnished and on the furnishing of the evidence

may make the declaration or, in special circumstances, may dispense with further evidence and make the declaration.

Declaration of presumption of death

680(1) If a claimant alleges that the person whose life is insured should be presumed to be dead by reason of the person not having been heard of for 7 years, and there is no other question in issue except a question under section 679, the insurer or the claimant may, before or after action is brought and on at least 30 days' notice, apply to the Court for a declaration as to presumption of the death, and the Court may make the declaration.

(2) A declaration of presumption of death made by the Court under subsection (1) must contain particulars of the following information to the extent that those particulars have been established to the satisfaction of the Court:

- (a) the full name of the person presumed dead, including a maiden or married name where applicable;
- (b) the sex of the person presumed dead;
- (c) the place where death is presumed to have occurred;
- (d) the date on which death is presumed to have occurred;
- (e) whether the presumed death was accidental.

Court order re payment of insurance money

681(1) On making a declaration under section 679 or 680, the Court may make an order respecting the payment of the insurance money and respecting costs that it considers just and a declaration or direction or an order made under this subsection is binding on the applicant and on all persons to whom notice of the application has been given.

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

Order stays pending action

682 Unless the Court orders otherwise, an application made under section 679 or 680 operates as a stay of any pending action with respect to the insurance money.

Order re furnishing of further evidence

683 If the Court finds that the evidence furnished under section 674 is not sufficient or that a presumption of death is not established, it may order that the matters in issue be decided in an action brought or to be brought, or may make any other order it considers just respecting further evidence to be furnished by the claimant, publication of advertisements, further inquiry or any other matter, or respecting costs.

Order for payment into Court

684(1) If an insurer admits liability for insurance money, or any part of it, and it appears to the insurer that

- (a) there are adverse claimants,
- (b) the whereabouts of a person entitled to the insurance money is unknown,
- (c) there is no person capable of giving and authorized to give a valid discharge for the insurance money who is willing to do so,
- (d) there is no person entitled to the insurance money, or
- (e) the person to whom the insurance money is payable would be disentitled on public policy or other grounds,

the insurer may, at any time after 30 days from the date of the happening of the event on which the insurance money becomes payable, apply to the Court ex parte for an order for payment of the insurance money into Court, and the Court may make an order accordingly on any notice it thinks necessary.

(2) The Court may fix, without taxation, the costs incurred on or in connection with an 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 considers just.

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

Simultaneous deaths

685 Unless a contract or a declaration provides otherwise, if the person whose life is 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 as if the beneficiary had predeceased the person whose life is insured.

Commutation of instalments of insurance money

686(1) In this section, “instalments” includes insurance money held by the insurer under section 687.

(2) Subject to subsections (3) and (4), if insurance money is payable in instalments and a contract, or an instrument signed by the insured and delivered to the insurer, provides that a beneficiary does not have the right to commute the instalments or to alienate or assign the beneficiary’s interest in the instalments, the insurer must not, unless the insured subsequently directs otherwise in writing, commute the instalments or pay them to any person other than the beneficiary, and the instalments are not, in the hands of the insurer, subject to any legal process except an action to recover the value of necessities supplied to the beneficiary or the beneficiary’s minor children.

(3) The Court may, on the application of a beneficiary on at least 10 days’ notice, declare that in view of special circumstances

- (a) the insurer may, with the consent of the beneficiary, commute instalments of insurance money, or
- (b) the beneficiary may alienate or assign the beneficiary’s interest in the insurance money.

(4) After the death of a beneficiary, the beneficiary’s personal representative may, with the consent of the insurer, commute any instalments of insurance money payable to the beneficiary.

Insurer holding insurance money

687(1) An insurer may hold insurance money

- (a) subject to the order of an insured or a beneficiary, or
- (b) on trusts or other agreements for the benefit of the insured or the beneficiary,

as provided in the contract, by an agreement in writing to which it is a party or by a declaration, with interest at a rate agreed on in the contract, agreement or declaration or, when no rate is agreed on, at the rate declared by the insurer in respect of insurance money held by it.

(2) The insurer is not bound to hold insurance money as provided in subsection (1) under the terms of a declaration to which it has not agreed in writing.

Court may order payment

688(1) If an insurer does not pay insurance money to some person competent to receive it or into Court within 30 days after receipt of the evidence required by section 674, the Court may on application of any person order that the insurance money or any part of the insurance money be paid into Court, or may make any other order as to the distribution of the money that it considers just.

(2) A payment made by an insurer under an order under subsection (1) discharges the insurer to the extent of the amount of the payment.

Fixing of costs

689 The Court may fix, without taxation, the costs incurred in connection with an application or order made under section 688 and may order them to be paid out of the insurance money or by the insurer or the applicant or otherwise as it considers just.

Insurance money payable to minor

690(1) If 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 for the insurance money who is willing to do so, the insurer may, at any time after 30 days from the date of the event on which the insurance money becomes payable, pay the money to the Public Trustee for the benefit of the minor and notify the Public Trustee of the name, date of birth and residential address of the minor.

(2) A payment made by an insurer under subsection (1) discharges the insurer to the extent of the amount of the payment.

Payment to representative

691 Despite section 690, when it appears to an insurer that a representative of a beneficiary who is a minor or is otherwise under

a legal disability may accept payments on behalf of the beneficiary under the law of the jurisdiction in which the beneficiary resides, the insurer may make payment to the representative, and the payment discharges the insurer to the extent of the amount of the payment.

Miscellaneous Provisions

Presumption against agency

692 An officer, agent or employee of an insurer, or a person soliciting insurance, whether or not an agent of the insurer, must not be considered to be the agent of the insured, person whose life is insured, group life insured or debtor insured, to that person's prejudice, in respect of any question arising out of a contract.

Information as to notices

693 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 that affects the insurance money.

Regulations

694 The Lieutenant Governor in Council may make regulations

- (a) respecting the circumstances under which an insurer may not restrict or exclude in a contract the right of an insured to designate persons to whom or for whose benefit insurance money is to be payable;
- (b) prescribing any matter that is required or permitted by this Subpart to be prescribed.

Subpart 6 Accident and Sickness Insurance

Definitions

695 In this Subpart,

- (a) "application" means an application for insurance or for the reinstatement of insurance;
- (b) "beneficiary" means a person, other than the insured or the insured's personal representative, to whom or for whose benefit insurance money is made payable in a contract or by a declaration;

- (c) “blanket insurance” means group insurance that covers loss
 - (i) arising from specific hazards incidental to or defined by reference to a particular activity or activities, and
 - (ii) occurring during a limited or specified period not exceeding 6 months in duration;
- (d) “contract” means a contract of insurance;
- (e) “creditor’s group insurance” means insurance effected by a creditor under which the lives or well-being, or both, of a number of the creditor’s debtors are insured severally under a single contract;
- (f) “debtor insured” means a debtor whose life or well-being, or both, are insured under a contract of creditor’s group insurance;
- (g) “declaration”, except in sections 708 to 711 and 729, means an instrument signed by the insured
 - (i) with respect to which an endorsement is made on the policy,
 - (ii) that identifies the contract, or
 - (iii) that describes the insurance or insurance fund or a part of the insurance or insurance fund,

in which the insured
 - (iv) designates, or alters or revokes the designation of, the insured, the insured’s personal representative or a beneficiary as one to whom or for whose benefit insurance money is to be payable, or
 - (v) makes, alters or revokes an appointment under section 726(1) or a nomination referred to in section 733;
- (h) “family insurance” means insurance under which the lives or well-being, or both, of the insured and one or more persons related to the insured by blood, marriage or adoption or by virtue of an adult interdependent relationship

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, under which the lives or well-being, or both, 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 (the “primary person”) whose life or well-being, or both, are insured under a contract of group insurance, but does not include a person whose life or well-being, or both, are insured under the contract as a person dependent on or related to the primary person;
- (k) “instrument” includes a will;
- (l) “insurance” means accident and sickness insurance;
- (m) “insured” means
 - (i) in the case of group insurance, in the provisions of this Subpart relating to the designation of beneficiaries or personal representatives as recipients of insurance money and their rights and status, the group person insured, and
 - (ii) in all other cases, 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 or debtor insured.

Application of Subpart 1

696 Sections 515, 521, 527, 530, 533, 537 and 547 apply to contracts of accident and sickness insurance.

Application of Subpart

Application of Subpart

697(1) Despite any agreement, condition or stipulation to the contrary, but subject to a regulation made under section 749, this Subpart applies to a contract made in Alberta on or after October 1, 1970 and this section and sections 695, 696, 698, 699, 707, 714, 715, 718, 721 and 723 to 747 apply also to a contract made in Alberta before that date.

(2) Sections 309, 310, 311, 312, 314, 320a and 320d of *The Alberta Insurance Act*, RSA 1955 c159, as they read on January 1, 1970, apply to a contract made in Alberta before October 1, 1970.

(3) This Subpart does not apply

- (a) except as otherwise provided by regulations, to insurance that is part of a contract of life insurance under which the insurer undertakes to pay insurance money, or to provide other benefits, in the event the person whose life is insured becomes disabled as a result of bodily injury or disease,
- (b) to insurance that is part of a contract of life insurance under which the insurer undertakes to pay an additional amount of insurance money in the event of death by accident of the person whose life is insured, or
- (c) to insurance provided under section 586, 587 or 588.

Application of Subpart to group insurance

698 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 Subpart 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 the group person insured became insured, and
- (b) the rights and obligations of the group person insured if the group person insured was resident in Alberta at the time the group person insured became insured.

Issuance and Contents of Policy

Issuance of policy

699(1) An insurer entering into a contract must

- (a) issue a policy, and
- (b) furnish to the insured the policy and a copy of the insured's application.

(2) Subject to subsection (3), the provisions in

- (a) the application,
- (b) the policy,
- (c) any document attached to the policy when issued, and
- (d) any amendment to the contract agreed on in writing after the policy is issued

constitute the entire contract.

(3) In the case of a contract made by a fraternal society, the policy, the Act or instrument of incorporation of the society, its constitution, bylaws 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.

(4) Except in the case of a contract of group insurance or of creditor's group insurance, an insurer, on request, must furnish to the insured or a claimant under the contract a copy of

- (a) the entire contract as set out in subsection (2) or (3), as applicable, and
- (b) any written statement or other record provided to the insurer as evidence of insurability under the contract.

(5) In the case of a contract of group insurance, an insurer

- (a) on request, must furnish to a group person insured or claimant under the contract a copy of
 - (i) the group person insured's application, and

- (ii) any written statement or other record, not otherwise part of the application, provided to the insurer as evidence of insurability of the group person insured under the contract;
 - (b) on request and reasonable notice, must permit a group person insured or claimant under the contract to examine, and must furnish to that person, a copy of the policy of group insurance.
- (6)** In the case of a contract of creditor's group insurance, an insurer
- (a) on request, must furnish to a debtor insured or claimant under the contract a copy of
 - (i) the debtor insured's application, and
 - (ii) any written statement or other record, not otherwise part of the application, provided to the insurer as evidence of insurability of the debtor insured under the contract;
 - (b) on request and reasonable notice, must permit a debtor insured or claimant under the contract to examine, and must furnish to that person, a copy of the policy of creditor's group insurance.
- (7)** An insurer may charge a reasonable fee to cover its expenses in furnishing copies of documents under subsection (4), (5) or (6), other than the first copy furnished to each person.
- (8)** Access to the documents described in subsections (5)(b) and (6)(b) does not extend
- (a) to information contained in those documents that would reveal personal information, as defined in the *Personal Information Protection Act*, about a person without that person's consent, other than information about
 - (i) the group person insured or debtor insured in respect of whom the claim is made, or
 - (ii) the person who requests the information,
- or

- (b) to information prescribed by the regulations.

(9) A claimant's access to documents under subsections (4) to (6) extends only to information that is relevant to

- (a) a claim under the contract, or
- (b) a denial of such a claim.

Particulars in policy

700(1) This section does not apply to a contract

- (a) of group insurance,
- (b) of creditor's group insurance, or
- (c) made by a fraternal society.

(2) An insurer must set out in the policy the following:

- (a) the name or a sufficient description of the insured and of the person insured;
- (b) the amount, or the method of determining the amount, of the insurance money payable, and the conditions under which it becomes payable;
- (c) 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;
- (d) the conditions on which the contract may be reinstated if it lapses;
- (e) the term of the insurance or the method of determining the dates on which the insurance starts and terminates;
- (f) the following statement:

Every action or proceeding against an insurer for the recovery of insurance money payable under the contract is absolutely barred unless commenced within the time set out in the *Insurance Act*.

(3) If a policy contains a provision removing or restricting the right of the insured to designate persons to whom or for whose benefit insurance money is to be payable, the front page of the policy must include the following statement in conspicuous bold type:

This policy contains a provision removing or restricting the right of the insured to designate persons to whom or for whose benefit insurance money is to be payable.

Particulars in group policy

701 In the case of a contract of group insurance or of creditor's group insurance, an insurer must set out the following in the policy:

- (a) the name or a sufficient description of the insured;
- (b) the method of determining the persons whose lives or well-being, or both, are insured;
- (c) the amount, or the method of determining the amount, of the insurance money payable, and the conditions under which it becomes payable;
- (d) the period of grace, if any, within which the premium may be paid;
- (e) the term of the insurance or the method of determining the dates on which the insurance starts and terminates;
- (f) in the case of a contract of group insurance, any provision removing or restricting the right of a group person insured to designate persons to whom or for whose benefit insurance money is to be payable;
- (g) in the case of a contract of group insurance that replaces another contract of group insurance on some or all of the group persons insured under the replaced contract, whether a designation of a group person insured, a group person insured's personal representative or a beneficiary as one to whom or for whose benefit insurance money is to be payable under the replaced contract applies to the replacing contract;
- (h) the following statement:

Every action or proceeding against an insurer for the recovery of insurance money payable under the contract is absolutely barred unless commenced within the time set out in the *Insurance Act*.

Termination and replacement of group contract

702(1) If a contract of group insurance or a benefit provision in a contract of group insurance is terminated, the insurer continues, as though the contract or benefit provision had remained in full force and effect, to be liable to pay to or in respect of a group person insured under the contract benefits relating to

- (a) loss of income because of disability,
- (b) death,
- (c) dismemberment, or
- (d) accidental damage to natural teeth,

arising from an accident or sickness that occurred before the termination of the contract or benefit provision if the disability, death, dismemberment or accidental damage to natural teeth is reported to the insurer within the 6-month period following the termination or a longer continuous period specified in the contract.

(2) Despite subsection (1), an insurer does not remain liable under a contract or benefit provision described in that subsection to pay a benefit for loss of income for the recurrence of a disability after both of the following occur:

- (a) the termination of the contract or benefit provision;
- (b) a continuous period of 6 months, or any longer period provided in the contract, during which the group person insured was not disabled.

(3) An insurer that is liable under subsection (1) to pay a benefit for loss of income as a result of the disability of a group person insured is not liable to pay the benefit for any period longer than the portion remaining, at the date of the disability, of the maximum period provided under the contract for the payment of benefits for loss of income in respect of a disability of the group person insured.

(4) If a contract of group insurance, in this subsection called the “replacement contract”, is entered into within 31 days after the termination of another contract of group insurance, in this subsection called the “other contract”, and that replacement contract insures some or all of the same group persons insured as the other contract,

- (a) the replacement contract is deemed to provide that any person who was insured under the other contract at the time of its termination is insured under the replacement contract from and after the termination of the other contract if
 - (i) the insurance on that person under the other contract terminated by reason only of the termination of the other contract, and
 - (ii) the person is a member of a class eligible for insurance under the replacement contract,
- (b) every person who was insured under the other contract and who is insured under the replacement contract is entitled to receive credit for any deductible earned before the effective date of the replacement contract, and
- (c) no person who was insured under the other contract at the time of its termination may be excluded from eligibility under the replacement contract by reason only of not being actively at work on the effective date of the replacement contract,

and, despite subsection (1), if the replacement contract provides that all benefits required to be paid under subsection (1) by the insurer of the other contract are to be paid instead under the replacement contract, the insurer of the other contract is not liable to pay those benefits.

Particulars in group certificate

703(1) In the case of a contract of group insurance or of creditor’s group insurance, an insurer must issue, for delivery by the insured to each group person insured or debtor insured, a certificate or other document in which are set out the following:

- (a) the name of the insurer and a sufficient identification of the contract;

- (b) the amount, or the method of determining the amount, of insurance on the group person insured or debtor insured and on any person insured;
- (c) the circumstances in which the insurance terminates and the rights, if any, on termination of the insurance of
 - (i) the group person insured, or
 - (ii) the debtor insured and any person insured;
- (d) in the case of a contract of group insurance that contains a provision removing or restricting the right of the group person insured to designate persons to whom or for whose benefit insurance money is to be payable,
 - (i) the method of determining the persons to whom or for whose benefit the insurance money is or may be payable, and
 - (ii) the following statement in conspicuous bold type:

This policy contains a provision removing or restricting the right of the group person insured to designate persons to whom or for whose benefit insurance money is to be payable.

- (e) in the case of a contract of group insurance that replaces another contract of group insurance on some or all of the group persons insured under the replaced contract, whether a designation of a group person insured, a group person insured's personal representative or a beneficiary as one to whom or for whose benefit insurance money is to be payable under the replaced contract applies to the replacing contract;
- (f) the rights of the group person insured, the debtor insured or a claimant under the contract to obtain copies of documents under section 699(5) or (6);
- (g) the following statement:

Every action or proceeding against an insurer for the recovery of insurance money payable under the contract

is absolutely barred unless commenced within the time set out in the *Insurance Act*.

(2) This section does not apply to a contract

- (a) of blanket insurance, or
- (b) of group insurance of a non-renewable type issued for a term not exceeding 6 months.

Exceptions or reductions

704(1) Subject to section 705 and except as otherwise provided in this section, the insurer must set out 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) If an exception or reduction affects only one provision in the policy, it must be set out in that provision.

(3) If an exception or reduction is contained in an endorsement, insertion or rider, the endorsement, insertion or rider must, 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 722 need not be set out in the policy.

(5) This section does not apply to a contract

- (a) of group insurance,
- (b) of creditor’s group insurance, or
- (c) made by a fraternal society.

Statutory conditions

705 Subject to section 706,

- (a) the conditions set out in this section are deemed to be part of every contract other than a contract of group insurance or of creditor’s group insurance, and must be printed on or attached to the policy forming part of the contract under the heading “Statutory Conditions”, and

- (b) no variation or omission of or addition to any statutory condition not authorized by section 706 is binding on the insured.

Statutory Conditions

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

MATERIAL FACTS 2 No statement made by the insured or a person insured at the time of application for the contract may be used in defence of a claim under or to avoid the 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 this policy is issued the person insured engages for compensation in an occupation that is classified by the insurer as more hazardous than that stated in the contract, the liability under the 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 occupation from that stated in the contract to an occupation classified by the insurer as less hazardous and the insurer is so advised in writing, the insurer must either

- (a) reduce the premium rate, or
- (b) issue a policy for the unexpired term of the 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 must refund to the insured the amount by which the unearned premium on the contract exceeds the premium at the lower rate for the unexpired term.

TERMINATION OF INSURANCE 4(1) The contract may be terminated

- (a) by the insurer giving to the insured 15 days' notice of termination by registered mail or 5 days' written notice of termination personally delivered, or

- (b) by the insured at any time on request.

(2) If the contract is terminated by the insurer,

- (a) the insurer must refund the excess of premium actually paid by the insured over the prorated premium for the expired time, but in no event may the prorated premium for the expired time be less than any minimum retained premium specified in the contract, and

- (b) the refund must accompany the notice.

(3) If the contract is terminated by the insured, the insurer must refund as soon as practicable the excess of premium actually paid by the insured over the short rate premium calculated to the date of receipt of the notice according to the table in use by the insurer at the time of termination.

(4) The 15-day period referred to in subparagraph (1)(a) of this condition starts to run on the day the registered letter or notification of it is delivered to the insured's postal address.

NOTICE AND PROOF OF CLAIM 5(1) The insured or a person insured, or a beneficiary entitled to make a claim, or the agent of any of them, must

- (a) give written notice of claim to the insurer

- (i) by delivery of the notice, or by sending it by registered mail, to the head office or chief agency of the insurer in the province, or

- (ii) by delivery of the notice to an authorized agent of the insurer in the province,

not later than 30 days after the date a claim arises under the contract on account of an accident, sickness or disability,

- (b) within 90 days after 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
 - (i) the happening of the accident or the start of the sickness or disability,
 - (ii) the loss caused by the accident, sickness or disability,
 - (iii) the right of the claimant to receive payment,
 - (iv) the claimant's age, and
 - (v) if relevant, the beneficiary's age,
 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 is made under the contract and, in the case of sickness or disability, its duration.
- (2) Failure to give notice of claim or furnish proof of claim within the time required by this condition does not invalidate the claim if
- (a) the notice or proof is given or furnished as soon as reasonably possible, and in no event later than one year after the date of the accident or the date a claim arises under the contract on account of sickness or disability, and it is shown that it was not reasonably possible to give the notice or furnish the proof in the time required by this condition, or
 - (b) in the case of the death of the person insured, if a declaration of presumption of death is necessary, the notice or proof is given or furnished no later than one year after the date a court makes the declaration.

INSURER TO FURNISH FORMS FOR PROOF OF

CLAIM 6 The insurer must furnish forms for proof of claim within 15 days after receiving notice of claim, but if the claimant has not received the forms within that time the claimant may submit his or her 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 7 As a condition precedent to recovery of insurance money under the contract,

- (a) the claimant must give the insurer an opportunity to examine the person of the person insured when and as often as it reasonably requires while a claim 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 MONEY PAYABLE OTHER THAN FOR LOSS OF TIME 8 All money payable under the contract, other than benefits for loss of time, must be paid by the insurer within 60 days after it has received proof of claim.

WHEN LOSS OF TIME BENEFITS PAYABLE 9 The initial benefits for loss of time must be paid by the insurer within 30 days after it has received proof of claim, and payment must be made after that date 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 proof of continuing sickness or disability before payment.

Omission or variation of conditions

706(1) If a statutory condition is not applicable to the benefits provided by a contract it may be omitted from the policy or varied so that it will be applicable.

(2) Statutory Conditions 3 and 7 set out in section 705 may be omitted from the policy if the contract does not contain any provisions respecting the matters dealt with in those Statutory Conditions.

(3) Statutory Condition 4 set out in section 705 must 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 and 7 set out in section 705 and, subject to the restriction in subsection (5), Statutory Condition 5, may be varied, but if by reason of the variation the contract is less favourable to the insured, a person insured or a beneficiary than it

would have been if the condition had not been varied, the statutory condition is deemed to be included in the policy in the form in which it appears in section 705.

(5) Statutory Condition 5(1)(a) and (b) set out in section 705 must not be varied in policies providing benefits for loss of time.

(6) Statutory Conditions 8 and 9 set out in section 705 may be varied by shortening the time periods set out in them.

(7) The title of a statutory condition must 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, Statutory Condition 4(1)(b) and (3) set out in section 705 must not be printed on the policy.

Notice of statutory conditions

707 In the case of a policy of accident and sickness insurance of a non-renewable type issued for a term of 6 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 bold type:

Despite any other provision contained in the contract, the contract is subject to the statutory conditions in the *Insurance Act* respecting contracts of accident and sickness insurance.

Limitation of actions

708(1) Subject to subsections (2) and (5), an action or proceeding against an insurer for the recovery of insurance money payable in the event of a person's death must be commenced not later than the earlier of

- (a) 2 years after the proof of claim is furnished, and
- (b) 6 years after the date of death.

(2) Subject to subsection (5), if a declaration has been made under section 710, an action or proceeding referred to in subsection (1) must be commenced not later than 2 years after the date of the declaration.

(3) Subject to subsection (5), an action or proceeding against an insurer for the recovery of insurance money not referred to in subsection (1) must be commenced not later than 2 years after the date the claimant knew or ought to have known of the first instance of the loss or occurrence giving rise to the claim for insurance money.

(4) If insurance money is not payable unless a loss or occurrence continues for a period of time specified in the contract, the date of the first instance of the loss or occurrence for the purposes of subsection (3) is deemed to be the first day after the end of that period.

(5) An action or proceeding against an insurer for the recovery of insurance money payable on a periodic basis must be commenced not later than the later of

- (a) the last day of the applicable period under subsection (1), (2), (3) or (4) for commencing an action or proceeding, and
- (b) if insurance money was paid, 2 years after the date the next payment would have been payable had the insurer continued to make periodic payments.

Declaration as to sufficiency of proof

709(1) If an insurer admits the validity of the insurance but does not admit the sufficiency of the evidence required by Statutory Condition 5(1) set out in section 705 and there is no other question in issue except a question under section 710, the insurer or the claimant may, before or after action is brought and on at least 30 days' notice, apply to the Court for a declaration as to the sufficiency of the evidence furnished, and the Court may make the declaration or may direct what further evidence is to be furnished and on the furnishing of the evidence may make the declaration or, in special circumstances, may dispense with further evidence and make the declaration.

(2) This section applies only in respect of a claim for accidental death benefits.

Declaration of presumption of death

710(1) If a claimant alleges that the person whose life is insured should be presumed to be dead by reason of the person not having been heard of for 7 years, and there is no other question in issue

except a question under section 709, the insurer or the claimant may, before or after action is brought and on at least 30 days' notice, apply to the Court for a declaration as to presumption of the death, and the Court may make the declaration.

(2) A declaration of presumption of death made by the Court under subsection (1) must contain particulars of the following information to the extent that those particulars have been established to the satisfaction of the Court:

- (a) the full name of the person presumed dead, including a maiden or married name where applicable;
- (b) the sex of the person presumed dead;
- (c) the place where death is presumed to have occurred;
- (d) the date on which death is presumed to have occurred;
- (e) whether the presumed death was accidental.

Court order re payment of insurance money

711(1) On making a declaration under section 709 or 710, the Court may make an order respecting the payment of the insurance money and respecting costs that it considers just, and a declaration or direction or an order made under this subsection is binding on the applicant and on all persons to whom notice of the application has been given.

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

Order stays pending action

712 Unless the Court orders otherwise, an application made under section 709 or 710 operates as a stay of any pending action with respect to the insurance money.

Termination for non-payment

713(1) If a policy evidencing a contract, or a certificate evidencing the renewal of a contract, is delivered to the insured and the initial premium due under the contract or renewal has not been fully paid,

- (a) the contract or the renewal of it evidenced by the policy or certificate is as binding on the insurer as if the premium had been paid even if the policy or certificate was 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 non-payment of the premium by the insurer giving 15 days' notice of termination by registered mail or 5 days' written notice of termination personally delivered.

(2) If a premium referred to in subsection (1) has not been fully paid, the insurer may do one or both of the following:

- (a) sue for any unpaid premium;
- (b) if there is a claim under the contract, except in the case of a contract of group insurance or of creditor's group insurance, deduct the amount of the unpaid premium from the amount for which the insurer is liable under the contract.

(3) If a premium, other than a premium referred to in subsection (1), is not fully paid at the time it is due, the premium may be paid within

- (a) a period of grace of 30 days after the date the premium is due, or
- (b) the period of grace within which the premium may be paid, if any, specified in the contract,

whichever is the longer period.

(4) If the event on which the insurance money becomes payable occurs during the period of grace and before the overdue premium is paid, the contract is deemed to be in effect as if the premium had been paid at the time it was due.

(5) Except in the case of a contract of group insurance or of creditor's group insurance, the amount of the overdue premium under subsection (4) may be deducted from the amount for which the insurer is liable under the contract.

(6) The 15-day period referred to in subsection (1)(b) starts to run on the day the registered letter or notification of it is delivered to the insured's postal address.

(7) Subsections (1), (2) and (6) do not apply to a contract made by a fraternal society.

Formation of Contract

Lack of insurable interest

714(1) Subject to subsection (2), if 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) If the person insured is under the age of 16 years, consent to the insurance may be given by one of the person's guardians within the meaning of Part 2 of the *Family Law Act*.

Persons insurable

715 Without restricting the meaning of "insurable interest", a person, in this section called the "primary person", has an insurable interest

- (a) in the case of a primary person who is a natural person, in his or her own life and well-being and the lives and well-being of
 - (i) the primary person's child or grandchild,
 - (ii) the primary person's spouse or adult interdependent partner,
 - (iii) a person on whom the primary person is wholly or partly dependent for, or from whom the primary person is receiving, support or education,
 - (iv) the primary person's employee, and
 - (v) a person in the duration of whose life or in whose well-being the primary person has a pecuniary interest,

and

- (b) in the case of a primary person that is not a natural person, in the lives and well-being of
 - (i) the primary person's director, officer or employee, and
 - (ii) a person in the duration of whose life or in whose well-being the primary person has a pecuniary interest.

Termination of contract by Court

716(1) If

- (a) a person whose life or well-being, or both, are insured under a contract is someone other than the insured, and
- (b) the person reasonably believes that the person's life or health might be endangered by the insurance on that person's life or well-being, or both, continuing under that contract,

on application of that person, the Court may make the orders the Court considers just in the circumstances.

(2) Without limiting subsection (1), the orders that the Court may make under subsection (1) include

- (a) an order that the insurance on that person under the contract be terminated in accordance with the terms of the contract other than any terms respecting notice of termination, and
- (b) an order that the amount of insurance under the contract be reduced.

(3) An application under subsection (1) must be made on at least 30 days' notice to the insured, the beneficiary, the insurer and any other person the Court considers to have an interest in the contract.

(4) Despite subsection (3), if the Court considers it just to do so, it may dispense with the notice in the case of a person

- (a) other than the insurer, or
- (b) if the contract is a contract of group insurance or of creditor's group insurance, the insured.

(5) An order made under subsection (1) binds any person having an interest in the contract.

Capacity of minor

717 Except in respect of the minor's rights as beneficiary, a minor who has reached the age of 16 years has the capacity of an adult

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

Disclosure of material facts

718(1) An applicant for insurance and a person to be insured must each disclose to the insurer in the application, on a medical examination, if any, and in any written statements or answers furnished as evidence of insurability, every fact within the applicant's or person's knowledge that is material to the insurance and is not so disclosed by the other.

(2) Subject to sections 719 and 722 and subsection (3), a failure to disclose, or a misrepresentation of, a fact referred to in subsection (1) renders the contract voidable by the insurer.

(3) A failure to disclose, or a misrepresentation of, a fact referred to in subsection (1) relating to evidence of insurability with respect to an application for

- (a) additional coverage under a contract,
- (b) an increase in insurance under a contract, or
- (c) any other change to insurance after the policy is issued,

renders the contract voidable by the insurer, but only in relation to the addition, increase or change.

Failure to disclose

719(1) Subject to section 722 and subsections (2) to (4), when a contract, including renewals of the contract, or an addition, increase or change referred to in section 718(3) has been in effect for 2 years with respect to a person insured, a failure to disclose, or a misrepresentation of, a fact required by section 718 to be disclosed in respect of that person does not, in the absence of fraud, render the contract voidable.

(2) In the case of a contract of group insurance or of creditor's group insurance, a failure to disclose, or a misrepresentation of, a fact required by section 718 to be disclosed in respect to a group person insured, a person insured or a debtor insured does not render the contract voidable, but

- (a) if the failure to disclose or misrepresentation relates to evidence of insurability specifically requested by the insurer at the time of application for the insurance in respect of the person, the insurance in respect of that person is voidable by the insurer, and
- (b) if the failure to disclose or misrepresentation relates to evidence of insurability specifically requested by the insurer at the time of application for an addition, increase or change referred to in section 718(3) in respect of the person, the addition, increase or change in respect of that person is voidable by the insurer,

unless the insurance, addition, increase or change has been in effect for 2 years during the lifetime of that person, in which case the insurance, addition, increase or change is not, in the absence of fraud, voidable.

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

(4) If a claim arises from a loss incurred or a disability beginning before the addition, increase or change has been in effect for 2 years with respect to the person in respect of whom the claim is made, subsection (1) does not apply to that claim.

Reinstatement of contract

720 Sections 718 and 719 apply, with all necessary modifications, to a failure to disclose or a misrepresentation at the time of reinstatement of a contract, and the period of 2 years referred to in section 719 starts to run in respect of a reinstatement from the date of reinstatement.

Pre-existing conditions

721 If a contract contains a general exception or reduction with respect to pre-existing disease or physical conditions and the group

person insured, person insured or debtor 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 of it, has been in effect continuously for 2 years immediately before the date of loss incurred or commencement of disability with respect to that person, and
- (b) 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 if the disease or physical condition was disclosed in the application for the contract.

Misstatement of age

722(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 may 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 or of creditor's group insurance, if there is a misstatement to the insurer of the age of a group person insured, person insured or debtor insured, the provisions, if any, of the contract with respect to age or misstatement of age apply.

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

Beneficiaries

Designation of beneficiary

723(1) Subject to subsection (4), an insured may in a contract or by a declaration designate the insured, the insured's personal representative or a beneficiary as one to whom or for whose benefit insurance money is to be payable.

(2) Subject to section 724(1), an insured may by declaration alter or revoke a designation referred to in subsection (1).

(3) A designation in favour of the "heirs", "next of kin" or "estate" of an insured, or the use of words having similar meaning in a designation, is deemed to be a designation of the personal representative of the insured.

(4) Subject to the regulations, an insurer may restrict or exclude in a contract the right of an insured to designate persons to whom or for whose benefit insurance money is to be payable.

(5) A contract of group insurance replacing another contract of group insurance on some or all of the group persons insured under the replaced contract may provide that a designation applicable to the replaced contract of a group person insured, a group person insured's personal representative or a beneficiary as one to whom or for whose benefit insurance money is to be payable is deemed to apply to the replacing contract.

(6) If a contract of group insurance replacing another contract of group insurance provides that a designation referred to in subsection (5) is deemed to apply to the replacing contract,

- (a)** each certificate in respect of the replacing contract must indicate that the designation under the replaced contract has been carried forward and that the group person insured should review the existing designation to ensure it reflects the group person insured's current intentions, and
- (b)** as between the insurer under the replacing contract and a claimant under that contract, that insurer is liable to the claimant for any errors or omissions by the previous insurer in respect of the recording of the designation carried forward under the replacing contract.

(7) If a beneficiary becomes entitled to insurance money and all or part of that insurance money remains with the insurer under a settlement option provided for in the contract or permitted by the insurer, that portion of the insurance money remaining with the insurer is deemed to be insurance money held pursuant to a contract on the life of the beneficiary, and, subject to the provisions of the settlement option, the beneficiary has the same rights and interests with respect to the insurance money that an insured has under a contract of life insurance.

Irrevocable designation

724(1) An insured may in a contract or by a declaration, other than a declaration that is part of a will, filed with the insurer at its head or principal office in Canada during the lifetime of the person whose life or well-being, or both, are insured, designate a beneficiary irrevocably, and in that event the insured, while the beneficiary is living, may not alter or revoke the designation without the consent of the beneficiary, and the insurance money is not subject to the control of the insured or the claims of the insured's creditors and does not form part of the insured's estate.

(2) If an insured purports to designate a beneficiary irrevocably in a will or in a declaration that is not filed with the insurer, the designation has the same effect as if the insured had not purported to make it irrevocable.

Designation in will

725(1) 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.

(2) Despite the *Wills Act*, a designation in a will is of no effect against a designation made later than the making of the will.

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

(4) If a designation is contained in an instrument that purports to be a will and the instrument, if it were valid as a will, would be revoked by operation of law or otherwise, the designation is revoked.

Trustee for beneficiary

726(1) 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.

(2) A payment made by an insurer to a trustee for a beneficiary discharges the insurer to the extent of the amount of the payment.

Predeceasing or disclaiming beneficiary

727(1) If 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 for in the contract or by a declaration, the share is payable

- (a) to the surviving beneficiary,
- (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 the personal representative of the insured or group person insured.

(2) If 2 or more beneficiaries are designated otherwise than alternatively but no division of the insurance money is made, the insurance money is payable to them in equal shares.

(3) A beneficiary may disclaim the beneficiary's right to insurance money by filing notice in writing with the insurer at its head or principal office in Canada.

(4) A notice of disclaimer filed under subsection (3) is irrevocable.

(5) Subsection (1) applies in the case of a disclaiming beneficiary or in the case of a beneficiary determined by a court to be disentitled to insurance money as if the disclaiming or disentitled beneficiary predeceased the person whose life or well-being, or both, are insured.

Enforcement of payment by beneficiary or trustee

728 A beneficiary may enforce for the beneficiary's own benefit, and a trustee appointed pursuant to section 726 may enforce as trustee, the payment of insurance money made payable to the beneficiary or trustee in the contract or by a declaration in

accordance with the provisions of the contract or declaration, but the insurer may set up any defence that it could have set up against the insured or the insured's personal representative.

Persons to whom insurance money payable

729(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 is 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) If an assignee of a contract gives notice in writing of the assignment to the insurer at its head or principal office in Canada, the assignee has priority of interest as against

- (a) any assignee other than one who gave notice earlier in a like manner, and
- (b) a beneficiary other than one designated irrevocably as provided in section 724 before the assignee gave notice to the insurer of the assignment in the manner provided for in this subsection.

(4) If a contract is assigned as security, the rights of a beneficiary under the contract are affected only to the extent necessary to give effect to the rights and interests of the assignee.

(5) If a contract is assigned unconditionally and otherwise than as security, the assignee has all the rights and interests given to the insured by the contract and by this Subpart and is deemed to be the insured.

(6) Unless the document by which a contract is assigned specifies otherwise, an assignment described in subsection (5) made on or after the date this section comes into force revokes

- (a) a designation of a beneficiary made before or after that date and not made irrevocably, and

- (b) a nomination referred to in section 733 made before or after that date.

(7) A contract may provide that the rights or interests of the insured or, in the case of a contract of group insurance or of creditor's group insurance, of the group person insured or debtor insured, as the case may be, are not assignable.

Insurance money not part of estate

730(1) If a beneficiary is designated, any insurance money payable to the beneficiary is not, from the time of the happening of the event on 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 in favour of any one or more of a spouse or adult interdependent partner, child, grandchild or parent of the person insured or group person insured, the insurance money and 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 under the *Civil Enforcement Act* or any other law in force in Alberta.

Dealings with Contract

Assignment of insurance

731(1) If a beneficiary

- (a) is not designated irrevocably, or
- (b) is designated irrevocably but has attained the age of 18 years and consents,

the insured may assign, exercise rights under or in respect of, surrender or otherwise deal with the contract as provided in the contract or in this Subpart or as may be agreed on with the insurer.

(2) Despite section 724(1), if a beneficiary is designated irrevocably and has not consented as described in subsection (1)(b), the insured may exercise any rights in respect of the contract that are prescribed by regulation.

(3) Subject to the terms of a consent under subsection (1)(b) or an order of the Court under subsection (4), if there is an irrevocable designation of a beneficiary under a contract, a person acquiring an interest in the contract takes that interest subject to the rights of that beneficiary.

(4) When a beneficiary who is designated irrevocably is unable to provide consent under subsection (1)(b) because of legal incapacity, an insured may apply to the Court for an order permitting the insured to deal with the contract without that consent.

(5) The Court may grant an order under subsection (4) on any notice and terms it considers just.

Entitlement to dividends

732(1) Despite the irrevocable designation of a beneficiary, the insured is entitled, before his or her death, to the dividends or bonuses declared on a contract unless the contract provides otherwise.

(2) Unless the insured directs otherwise, the insurer may apply the dividends or bonuses declared on the contract for the purposes of keeping the contract in force.

Third party policies

733(1) Despite the *Wills Act*, if in a contract or declaration it is provided that a person named in the contract or declaration has, on the death of the insured, the rights and interests of the insured in the contract,

- (a) the rights and interests of the insured in the contract do not, on the death of the insured, form part of the insured's estate, and
- (b) on the death of the insured, the person named in the contract or declaration has the rights and interests given to the insured by the contract and by this Subpart and is deemed to be the insured.

(2) If a contract or declaration referred to in subsection (1) provides that, on the death of the insured, 2 or more persons named in the contract or declaration have successively on the death of each of them the rights and interests of the insured in the contract,

this section applies successively, with all necessary modifications, to each of those persons and their rights and interests in the contract.

(3) Despite a nomination referred to in subsection (1), the insured, before his or her death, may

- (a) assign, exercise rights under or in respect of, surrender or otherwise deal with the contract as if the nomination had not been made, and
- (b) subject to the terms of the contract, alter or revoke the nomination by declaration.

Enforcement of right re group insurance

734 A group person insured may, in his or her own name, enforce a right given by a contract to the group person insured or to a person insured under the contract as a person dependent on or related to the group person insured, subject to any defence available to the insurer against the group person insured, such person insured or the insured.

Enforcement of right re creditor's group insurance

735(1) A debtor insured or a debtor who is jointly liable for the debt with the debtor insured may enforce in his or her own name the creditor's rights in respect of a claim arising in relation to the debtor insured, subject to any defence available to the insurer against the creditor or the debtor insured.

(2) Subject to subsection (3), if an insurer pays insurance money in respect of a claim under subsection (1), the insurer must pay the insurance money to the creditor.

(3) If the debtor insured provides evidence satisfactory to the insurer that the insurance money exceeds the debt then owing to the creditor, the insurer may pay the excess directly to that debtor insured.

Simultaneous deaths

736 Unless a contract or a declaration otherwise provides, if 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 as if the

beneficiary had predeceased the person insured or group person insured.

Order for payment into Court

737(1) If an insurer admits liability for insurance money, or any part of it, and it appears to the insurer that

- (a) there are adverse claimants,
- (b) the whereabouts of a person entitled to the insurance money is unknown,
- (c) there is no person capable of giving and authorized to give a valid discharge for the insurance money who is willing to do so,
- (d) there is no person entitled to the insurance money, or
- (e) the person to whom the insurance money is payable would be disentitled on public policy or other grounds,

the insurer may apply ex parte to the Court for an order for payment of the insurance money into Court, and the Court may make an order accordingly on any notice it thinks necessary.

(2) The Court may fix, without taxation, the costs incurred on or in connection with an 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 considers just.

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

Insurance money payable to minor

738(1) If 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 for the insurance money who is willing to do so, the insurer may, at any time after 30 days from the date of the event on which the insurance money becomes payable, pay the money to the Public Trustee for the benefit of the minor and notify the Public Trustee of the name, date of birth and residential address of the minor.

(2) A payment made by an insurer under subsection (1) discharges the insurer to the extent of the amount of the payment.

Payment to representative

739 Despite section 738, if it appears to an insurer that a representative of a beneficiary who is a minor or otherwise under a legal disability may accept payments on behalf of the beneficiary under the law of the jurisdiction in which the beneficiary resides, the insurer may make payment to the representative, and the payment discharges the insurer to the extent of the amount of the payment.

Payments not exceeding \$10 000

740 Even though 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 \$10 000 to

- (a) a relative of a person insured or the group person insured, or
- (b) a person appearing to the insurer to be equitably entitled to the insurance money by reason of having incurred expense 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 to such an expense,

and the payment discharges the insurer to the extent of the amount of the payment.

Proceedings under Contract

Payment of insurance money

741(1) Subject to subsections (3) to (5), insurance money is payable in Alberta.

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

(3) If a person entitled to receive insurance money is not resident in Alberta, the insurer may pay the insurance money to that person or to any person who is entitled to receive it on the person's behalf by the law of the jurisdiction in which the payee resides, and the

payment discharges the insurer to the extent of the amount of the payment.

(4) 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 the group person insured became insured.

(5) If insurance money is payable under a contract to a deceased person who was not resident in Alberta at the date of the person's death or to that person's personal representative, the insurer may pay the insurance money to the deceased person's personal representative as appointed under the law of the jurisdiction in which the person was resident at the date of the person's death, and the payment discharges the insurer to the extent of the amount of the payment.

Action for payment

742 Regardless of the place where a contract was made, a claimant who is resident in 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 is so authorized at the time the action is brought.

Insurer giving information

743 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 that affects the insurance money.

Undue prominence

744 An 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.

Relief from forfeiture or avoidance

745 If there has been imperfect compliance with a statutory condition as to any matter or thing done or omitted to be done by the insured, person insured or claimant with respect to the loss insured against and as a consequence the insurance is forfeited or avoided in whole or in part, and a court before which a question relating to the imperfect compliance is tried considers it inequitable that the insurance should be forfeited or avoided on that ground, the

court may relieve against the forfeiture or avoidance on any terms it considers just.

Disability benefits

746(1) If a contract issued after January 1, 1974 includes provision for disability benefits to be payable only during confinement of the person insured, the provision does not bind the insured, and the benefits in respect of disability under the contract during the disability are payable regardless of whether the person insured is confined or not.

(2) Despite subsection (1), a contract of accident and sickness insurance may provide for one or more of the following:

- (a) early commencement of loss of income benefits based on the admission of the person insured into a hospital, long-term care facility or other similar institution;
- (b) payment of loss of income benefits during the period of in-patient hospitalization of the person insured or the period during which the person insured is confined to a long-term care facility or other similar institution;
- (c) payment of daily benefits during the period of in-patient hospitalization of the person insured or the period during which the person insured is confined to a long-term care facility or other similar institution;
- (d) payment of lump sum benefits based on the admission of the person insured into a hospital or during the period of in-patient hospitalization or the admission into or period of confinement in a long-term care facility or other similar institution.

Presumption against agency

747 An officer, agent or employee of an insurer, or a person soliciting insurance, whether or not an agent of the insurer, must not be considered to be the agent of the insured, person insured, group person insured or debtor insured, to that person's prejudice, in respect of any question arising out of a contract.

Regulations

748 The Lieutenant Governor in Council may make regulations

- (a) respecting the application of this Subpart to insurance described in section 697(3)(a);
- (b) respecting the circumstances under which an insurer may not restrict or exclude in a contract the right of an insured to designate persons to whom or for whose benefit insurance money is to be payable;
- (c) prescribing any matter that is required or permitted by this Subpart to be prescribed.

Subpart 7 Transitional

Transitional matters

749(1) In this section, “former Part 5” means Part 5 of this Act as it read immediately before the coming into force of section 26 of the *Insurance Amendment Act, 2008*.

(2) The Lieutenant Governor in Council may make regulations respecting the transition of matters under the former Part 5 to Part 5 of this Act, including, without limitation, regulations

- (a) exempting a contract or class of contracts in effect on the date this section comes into force from the application of any provision of Part 5 of this Act or postponing to a specified date the application of any provision of Part 5 of this Act to a contract or class of contracts in effect on the date this section comes into force;
- (b) respecting the continuation of the application of any provision of the former Part 5 to a contract or class of contracts in effect on the date this section comes into force.

29 Section 764 is amended

- (a) **in subsection (8) by striking out** “before the Minister”;
- (b) **by adding the following after subsection (9):**
 - (9.1)** On receiving a request for a hearing under subsection (8), the Minister must appoint a person to conduct a hearing.
 - (9.2)** A person appointed to conduct a hearing must hold the hearing within 30 days of the person’s appointment or within

29 Section 764 presently reads in part:

- (8) A person or provincial company who receives*
 - (a) notice of intention under subsection (3) or (4) to make a permanent order, or*
 - (b) notice that a temporary order has been made under subsection (5)*

the time agreed on by that person and the person requesting the hearing.

(9.3) A person appointed to conduct a hearing may

- (a) make or adopt rules and procedures governing the hearing, and
- (b) determine whether the hearing will be in person or by means of an exchange of documents, whether in writing or electronic form.

(9.4) A person appointed to conduct a hearing must, within 60 days from the date the hearing is concluded, provide the Minister with a written report recommending that a permanent order be made or that a permanent order not be made.

(c) by repealing subsection (10)(b) and substituting the following:

- (b) a hearing is held pursuant to a request in accordance with subsection (8) and the Minister, on receiving a report under subsection (9.4), is of the opinion that a permanent order should be made,

30 Section 780(e) is repealed and the following is substituted:

- (e) in Part 5,
 - (i) in Subpart 1, sections 515(1), 531(1) and 545(3);
 - (ii) in Subpart 2, sections 551(1) and (8), 555(3), 571(6), 605 and 606(1) and (2);
 - (iii) in Subpart 3, sections 614(1), (2) and (3), 615 and 616(2) and (3);
 - (iv) in Subpart 4, sections 626, 629 and 630;
 - (v) in Subpart 6, section 744;

and who wishes to have a hearing before the Minister must serve a written request for the hearing on the Minister within 15 days after receipt of the notice.

(9) A temporary order made under subsection (5) becomes a permanent order at the end of the 15th day after it is made unless the person or provincial company to whom it is directed requests a hearing under subsection (8).

(10) Where

- (a) no hearing is requested in accordance with subsection (8), or*
- (b) a hearing is held pursuant to a request in accordance with subsection (8) and the Minister is of the opinion that a permanent order should be made,*

the Minister may make a permanent order, and the order takes effect immediately on being made or at a later date specified in the order.

30 Section 780(e) presently reads:

780 A person who contravenes any of the following provisions is guilty of an offence:

- (e) in Part 5,*
 - (i) in Subpart 1, sections 525(1) and 535(2), (4) and (5);*
 - (ii) in Subpart 2, sections 538(1), (2) and (3), 539 and 540(2) and (3);*
 - (iii) in Subpart 5, sections 610(1) and (8), 613.1(2), 627(6), 659 and 660(1) and (2);*
 - (iv) in Subpart 6, section 698;*

31 Section 781 is amended

- (a) in clause (a) by striking out “661.1” and substituting “610”;**
- (b) in clause (c.1) by striking out “section 658” and substituting “section 604”.**

32 Section 789(1) is amended by striking out “section 658 or an order under section 661.1(2)” and substituting “section 604 or an order under section 610(2)”.

33 Section 790(c) is amended by striking out “\$10 000” and substituting “\$25 000”.

34 The following is added after section 801:

Regulations

801.1 The Lieutenant Governor in Council may make regulations authorizing the Minister to charge and collect from reciprocal insurance exchanges, fraternal societies and insurers fees, levies or other assessments to be used to recover the costs incurred in the administration of this Act and the regulations, including, without limitation, regulations respecting

31 Section 781(a) and (c.1) presently read:

781 A person who

- (a) contravenes an order or direction made under section 21(4), 327(2), 423, 480.1, 507, 661.1, 764, 766 or 788,*
- (c.1) contravenes a written procedure established by the Superintendent under section 658,*

32 Section 789(1) presently reads:

789(1) Where the Minister is of the opinion that a person has contravened a prescribed provision of this Act or the regulations or has contravened a written procedure established by the Superintendent under section 658 or an order under section 661.1(2), the Minister may by notice in writing given to that person require that person to pay to the Government an administrative penalty by a date specified in the notice in the amount set out in the notice for each day or part of a day the contravention occurs or continues.

33 Section 790(c) presently reads:

790 The Lieutenant Governor in Council may make regulations

- (c) prescribing contraventions of provisions of this Act or the regulations in respect of which an administrative penalty may be imposed and prescribing the amounts, or the manner of determining the amounts, of the administrative penalties that may be imposed, not to exceed \$10 000 for each contravention;*

34 Regulation-making authority.

- (a) the amount of fees, levies and other assessments,
- (b) the manner in which fees, levies and other assessments are to be determined,
- (c) the manner in which and times at which fees, levies and other assessments must be paid,
- (d) the imposition of interest and penalties for unpaid fees, levies and other assessments, and
- (e) the waiving of fees, levies and other assessments.

35 Section 806 is amended

- (a) in subsection (1)(m) by striking out “753(10)” and substituting “764(10)”;**
- (b) in subsection (6) by adding “or to a person appointed to conduct a hearing under section 764” after “board”.**

35 Section 806 presently reads in part:

806(1) The Minister must serve each person who is directly affected by the following decisions with a written notice of the decision and the reasons for the decision:

- (a) an order of the Minister under section 21(4);*
- (b) the Minister's rejection of an application for licence on the basis of non-compliance with section 25(b);*
- (c) the Minister's decision under section 54(6) or (7);*
- (d) the Minister's refusal to approve a proposed continuance under section 147(1)(b);*
- (e) the Minister's refusal to approve an agreement under section 161 on the basis of section 161(3)(a);*
- (f) the Minister's refusal to approve a voluntary liquidation and dissolution under section 187;*
- (g) the refusal to issue or amend an instrument of incorporation in respect of a provincial company because the proposed name of the provincial company does not comply with section 211(1);*
- (h) the refusal to licence an insurer because the name of the insurer does not comply with section 211(1);*
- (i) the decision to issue a certificate of change of name of a provincial company under section 211(3);*

36 The following is added after section 816:

Privileged information

816.1 Any information, document, record, statement or other thing concerning a person licensed or applying for a licence under this Act that is made or disclosed to the Minister, the Superintendent, the Deputy Superintendent or an examiner by a person other than the person licensed or applying for a licence is privileged and may not be used as evidence in any civil or administrative proceeding brought by or on behalf of that person.

Insurance compliance self-evaluative audit

816.2(1) In this section,

- (a) “insurance compliance self-evaluative audit” means an evaluation, review, assessment, audit, inspection or investigation conducted by or on behalf of a licensed insurer or fraternal society, either voluntarily or at the request of the Minister or the Superintendent, for the purpose of identifying or preventing non-compliance with, or promoting compliance with or adherence to, statutes, regulations, guidelines or industry, company or professional standards;

- (j) the Minister's refusal of consent under section 257 on the basis of section 262(2);*
 - (k) an order of the Minister under section 423;*
 - (l) the Minister's designation, or refusal to revoke the designation, of a person as a related party under section 435;*
 - (l.1) an order of the Minister under section 480.1;*
 - (m) the making of a permanent order under section 753(10);*
 - (n) any other prescribed decision of the Minister.*
- (6) The Minister may pay fees and travelling and living expenses that the Minister considers proper to the members of a review board.*

36 Sections added to address privileged information.

(b) “insurance compliance self-evaluative audit document” means a document with recommendations or evaluative or analytical information prepared by or on behalf of a licensed insurer or fraternal society or the Minister or the Superintendent directly as a result of or in connection with an insurance compliance self-evaluative audit and includes any response to the findings of an insurance compliance self-evaluative audit, but does not include documents kept or prepared in the ordinary course of business of a licensed insurer or fraternal society.

(2) Subject to subsection (6), an insurance compliance self-evaluative audit document is privileged information and is not discoverable or admissible as evidence in any civil or administrative proceeding.

(3) Subject to subsection (6), no person or entity may be required to give or produce evidence relating to an insurance compliance self-evaluative audit or any insurance compliance self-evaluative audit document in any civil or administrative proceeding.

(4) Disclosure of an insurance compliance self-evaluative audit document to a person reasonably requiring access to it, including to a person acting on behalf of a licensed insurer or fraternal society with respect to the insurance compliance self-evaluative audit, to the external auditor of the licensed insurer or fraternal society, to the board of directors of the licensed insurer or fraternal society or a committee of the licensed insurer or fraternal society or to the Minister or the Superintendent, whether voluntarily or pursuant to law, does not constitute a waiver of the privilege with respect to any other person.

(5) A licensed insurer or fraternal society that prepares or causes to be prepared an insurance compliance self-evaluative audit document may expressly waive privilege in respect of all or part of the insurance compliance self-evaluative audit document.

(6) The privileges set out in subsections (2) and (3) do not apply

- (a) to a proceeding commenced against a licensed insurer or fraternal society by the Minister or the Superintendent in which an insurance compliance self-evaluative audit document has been disclosed,
- (b) if the privilege is asserted for fraudulent purposes,
- (c) in a proceeding in which a person who was involved in conducting an insurance compliance self-evaluative audit is a party seeking admission of the insurance compliance self-evaluative audit document in a dispute related to the person's participation in conducting the insurance compliance self-evaluative audit, or
- (d) to information referred to in an insurance compliance self-evaluative audit document that was not prepared as a result of or in connection with an insurance compliance self-evaluative audit.

37(1) The *Alberta Corporate Tax Act* is amended by this section.

(2) Section 86(1) is amended

- (a) in clause (a) by adding “and sickness” **after** “accident”;
- (b) by repealing clause (h).

(3) Section 87(1)(a) is repealed and the following is substituted:

- (a) 2% of the amount of premiums receivable during the year by the company under contracts of accident and sickness insurance and life insurance, and

38 The *Conflicts of Interest Act* is amended in Part 3 of the Schedule

- (a) by striking out “Alberta Insurance Rate Board”;
- (b) by adding “Automobile Insurance Rate Board” **after** “Appeal panel under the *Dependent Adults Act*”.

37 Amends RSA 2000 cA-15.

38 Amends RSA 2000 cC-23.

39(1) The *Hospitals Act* is amended by this section.

(2) Section 61.1 is repealed and the following is substituted:

Application of section 570, Insurance Act

61.1 Nothing in section 570 of the *Insurance Act* affects the application of this Part.

40(1) The *Maternal Tort Liability Act* is amended by this section.

(2) Section 1(b) is amended by striking out “608” and substituting “549”.

(3) Section 5(1) is amended by striking out “section 635” and substituting “section 579”.

41(1) The *Motor Vehicle Accident Claims Act* is amended by this section.

(2) Section 1(c)(v) is amended by adding “and sickness” after “accident”.

(3) Section 17(12) is amended by striking out “section 626.1” and substituting “section 570”.

(4) Section 25(2)(k) is amended by striking out “Subpart 5” and substituting “Subpart 2”.

42(1) The *Survivorship Act* is amended by this section.

(2) Section 4 is amended by striking out “sections 599 and 690” and substituting “sections 685 and 736”.

43(1) The *Workers’ Compensation Act* is amended by this section.

(2) Section 1.1 is amended by striking out “section 626.1” and substituting “section 570”.

44 The *National Bond Insurance Corporation Act*, SA 1999 c34, is repealed.

45 This Act, except sections 1, 3, 6, 7, 10, 11, 13, 14, 15, 16, 19, 20, 21, 22, 24, 25, 29, 33, 34, 35, 36, 38 and 44, comes into force on Proclamation.

39 Amends RSA 2000 cH-12.

40 Amends SA 2005 cM-7.5.

41 Amends RSA 2000 cM-22.

42 Amends RSA 2000 cS-28.

43 Amends RSA 2000 cW-15.

44 Repeal of Act.

45 Coming into force.

RECORD OF DEBATE

Stage	Date	Member	From	To

	Questions and Comments	From	To

Stage	Date	Member	From	To

	Questions and Comments	From	To

Stage	Date	Member	From	To

	Questions and Comments	From	To

Stage	Date	Member	From	To

	Questions and Comments	From	To