

# BILL

No. 13 of 1923.

An Act respecting Conditions in Policies of Automobile Insurance.

(Assented to \_\_\_\_\_, 1923.)

**H**IS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

## SHORT TITLE.

**1.** This Act may be cited as "*The Automobile Insurance Policy Act.*"

## INTERPRETATION.

**2.** In this Act, unless the context otherwise requires,—

- (a) "Automobile" shall include all motor vehicles, locomobiles, motorcycles and other vehicles propelled otherwise than by muscular power, and their trailers, accessories and equipment, but shall not include the cars of electric and steam railways and other motor vehicles running only upon rails or tracks;
- (b) "Contract" shall mean an agreement whereby an insurer undertakes to indemnify an insured against liability for loss or damage to persons or property caused by an automobile or the operation thereof and against loss of or damage in an automobile, and includes a policy, certificate, interim receipt, renewal receipt or writing evidencing the contract, whether sealed or not, and a binding oral agreement;
- (c) "Insurer" shall include any corporation or any society or association, incorporated or unincorporated, or any person or partnership, or any underwriter or group of underwriters that undertakes or effects, or agrees or offers for valuable consideration to undertake or effect, a contract of insurance within the meaning of this Act;
- (d) "Policy" shall mean an instrument containing all the terms of the agreement between the parties.

**3.** The provisions of *The Alberta Insurance Act* relating to fire insurance policies, and schedule C to the said Act shall not apply to a contract to which this Act applies.

**4.** No contract shall be made for a term exceeding three years, but any contract may be renewed by the delivery of a renewal receipt or a new premium note.

**5.**—(1) No insurer shall undertake or effect any contract for a period exceeding fourteen days without a written application therefor, signed by the insured or his agent, duly authorized in writing.

(2) Every written application shall set forth—

- (a) the name, address and occupation or business of the assured;
- (b) the description of the automobile;
- (c) its purchase price to the insured, and whether fully paid or not;
- (d) whether purchased new or otherwise;
- (e) particulars of any mortgage, lien or other incumbrance thereon;
- (f) the place where the automobile is and will be usually kept;
- (g) the purposes for which and the locality where it is and will be chiefly used;
- (h) the fact of any accident in which any automobile owned or operated by the insured has within the last three years preceding the application been involved;
- (i) particulars of any claim made against or by the insured in respect of the ownership or operation of any automobile within such period;
- (j) whether any insurer has cancelled any automobile policy of the insured or refused automobile insurance to the insured;
- (k) such further information as the insurer may require.

(3) Upon every written application there shall be printed or stamped in conspicuous type, not less in size than ten-point, and in red ink the following words: "If the applicant knowingly misrepresents or conceals any fact or circumstance required by this application to be made known, the contract of insurance shall be void as to the property or risk undertaken in respect of which the misrepresentation or omission is made."

**6.** Every policy shall contain—

- (a) the name and address of the insurer;
- (b) the name, address and occupation or business of the insured;

- (c) the name of the person to whom the insurance is payable;
- (d) the premium or other consideration 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 such liability is to accrue;
- (h) the term of the insurance.

**7.** Subject to sections 8, 9 and 10, the conditions set forth in the schedule shall be deemed to be part of every contract in force in the Province, and shall be printed on every policy, with the heading "Statutory Conditions."

**8.**—(1) If the policy insures only against accident to the person or damage to the property of the insured, statutory condition numbered 8 may be omitted.

(2) If the policy does not insure against loss of or damage to the insured automobile, statutory condition numbered 9 may be omitted.

(3) Where a statutory condition is so omitted, there shall be inserted after the condition number the following words: "This condition is not applicable to this policy and is omitted pursuant to Statute."

**9.** A policy may contain a clause to the effect that the insurer shall be liable only for an agreed proportion of any loss or for the amount of a loss after deduction of a sum specified in the policy, in which case there shall be printed or stamped upon the face of the policy in conspicuous type and in red ink the words: "This policy contains a partial-liability clause."

**10.**—(1) If an insurer desires to vary, omit or add to the statutory conditions or any of them, otherwise than as provided in sections 8 and 9 hereof, there shall be printed in conspicuous type, not less in size than ten-point and in red ink, immediately after such conditions, the proposed variations or additions or a reference to the omissions, with these introductory words:

"VARIATIONS IN CONDITIONS.

"This policy is issued on the above statutory conditions, with the following variations, omissions and additions, which are, by virtue of *The Automobile Insurance Policy Act*, in force so far only as they shall be held to be just and reasonable to be exacted by the company."

(2) No variation, omission or addition shall be binding on the insured unless subsection (1) has been complied with; and any variation, omission or addition shall be so binding only in so far as it is held by the Court before which a question relating therein is tried to be just and reasonable.

**11.** No red ink shall be used in printing a policy except for the purposes mentioned in this Act and for the name, address and emblem of the insurer and the number of the policy.

**12.** In any case where there has been imperfect compliance with a statutory condition as to the proof of loss to be given by the insured or any other matter or thing required to be done or omitted by the insured with respect to the loss, and a consequent forfeiture or avoidance of the insurance in whole or in part, and the Court deems it inequitable that the insurance should be forfeited or avoided on that ground, the Court may relieve against the forfeiture or avoidance on such terms as it may deem just.

**13.** This Act shall come into force on a day to be fixed by the Lieutenant Governor by his proclamation.

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## SCHEDULE.

### STATUTORY CONDITIONS.

1. All statements made by the insured upon the application for this policy shall, in the absence of fraud, be deemed representations and not warranties, and no such statement shall be used in defence of a claim under this policy, unless it is contained in the written application for the policy and unless a copy of the application, or such part thereof as is material to the contract, is indorsed upon or attached to the policy when issued.

2. If any person applying for insurance falsely describes the property to the prejudice of the insurer or knowingly misrepresents or conceals or omits to communicate any circumstance which is required by the terms of the written application to be made known to the insurer, the contract shall be void as to the property or risk undertaken in respect to which the misrepresentation or omission is made.

3. Any change material to the risk, and within the control and knowledge of the insured, shall void the policy as to the part affected thereby, unless the change is promptly notified in writing to the insurer or its local agent; and the insurer when so notified may return the unearned portion

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

4. After a written application for insurance, it shall be deemed that any policy sent to the insured is intended to be in accordance with the terms of the application, unless the insurer points out by registered letter addressed to the insured the particulars wherein it differs from the application, in which case the insured may within one week from the receipt of the notification reject the policy.

5. The insurer shall not be liable under this policy while the automobile, with the knowledge, consent or connivance of the insured, is being driven by a person under the age limit fixed by law, or, in any event, under the age of sixteen years, or by an intoxicated person.

6.—(1) Unless otherwise specifically stated in the policy, or indorsed thereon, the insurer shall not be liable—

- (a) for loss or damage caused by earthquake, invasion, insurrection, riot, civil commotion, military or usurped power;
- (b) if the interest of the insured in the automobile is other than unconditional and sole ownership;
- (c) if the automobile is or becomes incumbered by any lien or mortgage;
- (d) if there is any material change in the nature of the insurable interest of the insured in the automobile, by sale, assignment, or otherwise, except through change of title by succession, or by death, or by an authorized assignment under *The Bankruptcy Act*;
- (e) if at the time a loss, damage or accident occurs there is any other insurance, of the same interest, whether valid or not, covering the said loss or damage, or any portion thereof, which would have been in force if this insurance had not been effected.

(2) If permission has been given for other insurance under paragraph (e) of this condition, the insurer will be liable only for his rateable proportion of such loss or damage.

7. The insurer shall be permitted at all reasonable times to inspect the automobile and its equipment.

8.—(1) Upon the occurrence of an accident involving bodily injuries or death, or damage to property of others, the insured shall promptly give written notice thereof to the insurer, with the fullest information obtainable at the time. The insured shall give like notice with full particulars of any claim made on account of such accident,

and every writ, letter, document or advice received by the insured from or on behalf of any claimant shall be immediately forwarded to the insurer.

(2) The insured shall not voluntarily assume any liability to settle any claim except at his own cost. The insured shall not interfere in any negotiations for settlement or in any legal proceeding, but, whenever requested by the insurer, shall aid in securing information and evidence and the attendance of any witnesses, and shall co-operate with the insurer, except in a pecuniary way, in all matters which the insurer deems necessary in the defence of any action or proceeding or in the prosecution of any appeal.

(3) No action to recover the amount of a claim under this policy shall lie against the insurer unless the foregoing requirements are complied with and such action is brought after the amount of the loss had been ascertained either by a judgment against the insured after trial of the issue or by agreement between the parties with the written consent of the insurer and no such action shall lie in either event unless brought within one year thereafter.

9.—(1) Upon the occurrence of any loss of or damage to the insured automobile, the insured shall, if such loss is covered by this policy—

- (a) forthwith give notice thereof, in writing, to the insurer, with fullest information obtainable at the time, and shall, at the expense of the insurer, and as far as reasonably possible, protect the automobile from further loss or damage, and any such further loss or damage accruing directly or indirectly from a failure to protect shall not be recoverable hereunder. No repairs shall be undertaken or any physical evidence of the loss or damage removed without the written consent of the insurer, except such repairs as are immediately necessary for the protection of the automobile from further loss or damage; or until the insurer has had a reasonable time to make the examination provided for in subsection (2) of this condition;
- (b) deliver to the insurer within ninety days of the date of the loss or damage a statutory declaration stating the place, time and cause of the loss or damage, so far as the insured knows or believes, the interest of the insured and of all others in the automobile, the sound value thereof, the amount of loss or damage thereto, and 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) After any loss or damage to an insured automobile, the insurer shall have right of access to and examination of

such automobile by accredited agents of the insurer sufficient to enable such agents to ascertain the amount of the damage sustained.

(3) The insured shall submit to examination under oath and shall produce for examination, at such reasonable place as is designated by the insurer or its representatives, all books of account, bills, invoices and other vouchers in his possession or control which relate to the matters in question and shall permit extracts and copies thereof to be made.

(4) The insurer shall not be liable beyond the actual cash value of the automobile at the time any loss or damage occurs, and the loss or damage shall be ascertained or estimated according to such actual cash value, with proper deduction for depreciation, however caused, and shall in no event exceed what it would cost to repair or replace the automobile or any part thereof with material of like kind and quality; provided that in the event of any part of the automobile being obsolete and out of stock the liability of the insurer in respect thereof shall be limited to the value of such part at the time of loss or damage, not exceeding the maker's last list price; the ascertainment or estimate of such loss or damage shall be made by the insured and the insurer, or if they disagree, then by appraisers, as hereunder provided.

(5) Except where an appraisal has been made, the insurer instead of making payment may within a reasonable time repair, rebuild or replace the property damaged or lost with other of like kind and quality, giving written notice of the intention so to do within seven days after the receipt of the proof of loss; but there can be no abandonment of the automobile to the insurer without the consent of the latter. In the event of the insurer exercising such option the salvage (if any) shall revert to it.

(6) In the event of disagreement as to the nature and extent of the repairs and replacements required, or as to their adequacy, if effected, or as to the amount payable in respect of any loss or damage, such questions shall be determined by appraisers before recovery can be had hereunder, whether the right to recover on the policy is disputed or not and independently of all other questions. The insured and the insurer shall each select one appraiser, and the two so chosen shall then select a disinterested umpire. Thereafter the two appraisers together shall estimate or appraise the loss or damage, stating separately sound value and damage, or determine the adequacy of such repairs or replacements, and, failing to agree, shall submit their differences to the umpire.

(7) In case either party fails to name an appraiser within seven clear days after being served with written notice so to do, or in case the appraisers fail to agree upon

an umpire within fifteen days after their appointment, or in case an appraiser or umpire refuses to act or is incapable of acting, or dies, a judge of a Supreme or District Court having jurisdiction in the district in which the appraisal is to be made may appoint such appraiser or umpire on the application of the insured or the insurer.

(8) An award in writing of the two appraisers, or of one appraiser and the umpire, shall determine the nature and extent or adequacy of the repairs and replacements, or the amount of such loss or damage.

(9) Each party shall pay the appraiser selected by him, and shall bear equally the other expenses of the appraisal and of the umpire.

(10) Neither the insurer nor the insured shall be deemed to have waived any provision or condition of this policy by any act relating to the appraisal or the delivery and completion of proofs of loss, or to the investigation or adjustment of the claim.

(11) The sum for which the insurer is liable hereunder for loss or damage shall be payable within sixty days after the proof of loss herein required has been received by the insurer; but if appraisal is demanded, then within fifteen days after the award has been made by the appraisers. No suit or action, however, may be brought for the recovery of any claim unless the insured has complied with the foregoing requirements, nor unless such action is commenced within one year after the happening of the loss.

10. Notice of claim may be given and proofs of claim may be made by the agent of the insured in case of the absence of the insured or in case of 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.

11. Any fraud or wilfully false statement made under oath, or in a declaration made in relation to any of the above particulars, shall vitiate the claim of the person making the declaration in any matter affected by such fraud or false statement.

12. The insurer on paying the loss shall be subrogated to the extent of such payment to all right of recovery against any third party, and on such payment or on assuming liability therefor may require from the insured a transfer of his rights against such third party, and the insured shall execute all documents properly required by the insurer to secure to it such rights.

13.—(1) This policy may be cancelled at any time at the request of the insured, and the insurer shall, upon surrender of the policy, refund the excess of paid premium above the customary short-rate premium for the time the policy has been in force.



(2) This policy may be cancelled at any time by the insurer giving to the insured fifteen days' notice in writing of cancellation by registered mail, or five days' notice of cancellation personally delivered, and refunding the excess of paid premium beyond the *pro rata* premium for the expired time. Repayment of excess premiums may be made by money, post office order, postal note, or cheque. Such repayment shall accompany the notice, and in such case the fifteen days above mentioned shall commence to run from the day following the receipt of the registered letter at the post office to which it was addressed.

14. No condition or provision of this policy, either in whole or in part, shall be deemed to have been waived or altered by the insurer unless the waiver is clearly expressed in writing signed by the manager of the insurer or its chief agent for Canada or this Province.

15. Any written notice to the insurer may be delivered at or sent by registered post to the chief agency or head office of the insurer in this Province. Written notice may be given to the insured by letter personally delivered to him or by registered letter addressed to him at his last post office address notified to the insurer, or, where no address is notified and the address is not known, addressed to him at the post office (if any) from which the application was received.

No. 13.

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THIRD SESSION  
FIFTH LEGISLATURE  
13 GEORGE V  
1923

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**BILL**

An Act respecting Conditions in  
Policies of Automobile Insurance.

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Received and read the

First time.....

Second time.....

Third time.....

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HON. MR. ~~GREENFIELD~~.

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EDMONTON:  
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