

BILL

No. **11** of 1925

An Act to make Uniform the Law respecting Policies of
Fire Insurance.

(Assented to _____, 1925.)

HIS 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 Fire Insurance Policy Act.*"

INTERPRETATION.

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

- (a) "Company" includes any corporation, or any society or association, incorporated or unincorporated, or any person or partnership, or any underwriter or group of underwriters, or the attorney in fact of any reciprocal or inter-insurance association, 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;
- (b) "Contract" means an agreement whereby a company undertakes to indemnify the insured against loss of or damage to property in the Province or in transit therefrom or thereto, caused by fire, lightning or explosion, and includes a policy, certificate, interim receipt, renewal receipt or writing evidencing the contract, whether sealed or not, and a binding oral agreement;
- (c) "Policy" means an instrument containing all the terms of the agreement between the parties;
- (d) "Property" includes use and occupancy, rents, profits and charges where these are the subject matter of the insurance.

TERM OF CONTRACT.

3. No contract shall be made for a term exceeding three years, or, in the case of a mercantile or manufacturing risk, whether on building or contents, or other property or interest, exceeding one year, but any contract may be renewed by the delivery of a renewal receipt or a new premium note.

CONTENTS OF POLICY.

4. Every policy shall contain the name of the company, the address of the chief agency of the company in the Province, the name of the insured, the name of the person or persons to whom the insurance money is payable, the premium or other consideration for the insurance, the subject matter of the insurance, the indemnity for which the company may become liable, the event on the happening of which such liability is to accrue and the term of the insurance.

STATUTORY CONDITIONS.

5.—(1) Subject to the provisions of subsection (2) of this section and of section 6, the conditions set forth in the schedule to this Act shall be deemed to be part of every contract in force in Alberta, and shall be printed on every policy with the heading "Statutory Conditions."

(2) Where the subject matter of the insurance is exclusively rents, charges and loss of profits or any of them, the conditions numbered 3, 11, 12, 13, 15 and 19, as set forth in such schedule, shall not be part of such contract and need not be printed on the policy.

VARIATIONS.

6.—(1) If a company desires to vary, omit or add to the statutory conditions or any of them, 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 Fire 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 the foregoing provisions of this section have 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 thereto is tried, to be just and reasonable.

CO-INSURANCE CLAUSE.

7. A policy may contain a co-insurance clause, in which case it shall have printed or stamped upon its face in conspicuous type and in red ink the words "This policy contains a co-insurance clause," and unless those words are so printed or stamped such clause shall not be binding upon the insured. Such clause shall not be deemed an addition to the statutory conditions or subject to the provisions of section 6.

USE OF RED INK.

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

RELIEF FROM FORFEITURE.

9. 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 and a consequent forfeiture or avoidance of the insurance, in whole or in part, and the court deems it inequitable that the insurance shall be forfeited or avoided on that ground, the court may relieve against the forfeiture or avoidance on such terms as may seem just.

REPEAL.

10. Section 68; subsections (1), (3), (4), (5) and (6) of section 69, and sections 70 to 77 inclusive of *The Alberta Insurance Act*, being Chapter 171 of the Revised Statutes of Alberta, 1922, are hereby repealed.

RIGHT TO RECOVER EXCESS.

11. Where a company, having paid its share of the loss as determined by a reference under statutory condition number 17, is dissatisfied with the apportionment made by the referee or referees, it may, by action in a court of competent jurisdiction, recover from the other company or companies, in accordance with their respective liabilities, the amount, if any, which in the opinion of the court it has paid in excess of its just share of the loss.

CONSTRUCTION OF ACT.

12. This Act shall be so interpreted and construed as to effect its general purpose of making uniform the law of those provinces which enact it.

COMING INTO FORCE.

13. This Act shall come into force on a date to be fixed by the Lieutenant Governor by his Proclamation.

 SCHEDULE.

STATUTORY CONDITIONS.

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

2. *Form of Contract.*—After application for insurance, if the same is in writing, 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 company points out in writing the particulars wherein it differs from the application, in which case the insured may, within two weeks from the receipt of the notification, reject the policy.

3. *Property Not Insured.*—Unless otherwise specifically stated in the policy, money, books of account, securities for money, evidences of debt or title, and automobiles, tractors and other motor vehicles, are not insured.

4. *Risks Not Covered.*—Unless otherwise specifically stated in the policy, the company is not liable for the losses following, that is to say:

- (a) For loss of or damage to property owned by any person other than the insured, unless the interest of the insured therein is stated in the policy;
- (b) For loss or damage caused by invasion, insurrection, riot, civil commotion, military or usurped power;
- (c) For loss due to the want, within the knowledge of the insured, of good and substantial chimneys; or caused by ashes or embers being deposited, with the knowledge and consent of the insured, in wooden vessels; or by stoves or stove-pipes being, to the knowledge of the insured, in an unsafe condition or improperly secured; or
- (d) For loss of or damage to goods while undergoing any process in or by which the application of fire heat is necessary.

5. *Risks Not Covered Except by Special Permission.*—Unless permission is given by the policy or indorsed thereon, the company shall not be liable for loss or damage occurring:

- (a) *Repairs.*—To buildings or their contents during alteration or repair of the buildings and in consequence thereof, fifteen days being allowed in each year for incidental alterations or repairs without such permission;
- (b) *Inflammable Substances.*—While illuminating gas or vapour is generated, by the insured or to his knowledge, in the building insured or which contains the property insured, or while there is stored or kept therein by the insured or, to his knowledge, by any person under his control, petroleum or any liquid product thereof, coal oil, camphene, gasoline, burning fluid, benzine, naptha, or any of their constituent parts (refined oil for lighting, heating or cooking purposes only, not exceeding five gallons in quantity, gasoline, if contained in a tightly closed metallic can free from leaks and not exceeding one quart in quantity, or lubricating oil, not being crude petroleum nor oil of less specific gravity than is required by law for illuminating purposes, not exceeding five gallons in quantity, excepted), or more than twenty-five pounds weight of gunpowder, dynamite or similar explosives;

- (c) *Change of Interest.*—After the interest of the insured in the subject matter of the insurance is assigned, but this condition is not to apply to an authorized assignment under *The Bankruptcy Act* or to change of title by succession, by operation of law, or by death;
- (d) *Vacancy.*—When the building insured or containing the property insured is, to the knowledge of the insured, vacant or unoccupied for more than thirty consecutive days, or, being a manufacturing establishment, ceases to be operated and continues out of operation for more than thirty consecutive days.

6. *Explosion and Lightning.*—The company will make good loss or damage caused by lightning or by the explosion of coal or natural gas in a building not forming part of gasworks, whether fire ensues therefrom or not; and loss or damage by fire caused by any other explosion; but, if electrical appliances or devices are insured, any loss or damage to them caused by lightning or other electrical currents is excluded and the company shall be liable only for such loss or damage to them as may occur from fire originating outside the articles themselves.

7. *Material Change.*—Any change material to the risk, and within the control and knowledge of the insured, shall avoid the policy as to the part affected thereby, unless the change is promptly notified in writing to the company or its local agent; and the company 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 company an additional premium, and in default of such payment the policy shall no longer be in force and the company shall return the unearned portion, if any, of the premium paid.

8. *Other Insurance*—

- (a) If the insured has at the date of this policy any other insurance on property covered thereby which is not disclosed to the company, or hereafter effects any other insurance thereon without the written assent of the company, he shall not be entitled to recover more than seventy-five per cent of the loss in respect of such property; but if for any fraudulent purpose the insured does not disclose such other insurance, this policy shall be void;
- (b) The company shall be deemed to have assented to such other insurance unless it dissents by notice in writing within two weeks after notice thereof;
- (c) In the event of there being other insurance of the same class and character on the property herein described at the time of the happening of a loss in respect thereof, the company shall be liable only for payment of a ratable proportion of the loss or a ratable proportion of such amount as the insured shall be entitled to recover under clause (a) of this condition.

9. *Mortgages and Other Payees.*—

- (a) In case this policy is assigned to a mortgagee or other creditor of the insured, if the company claims that no liability to the insured existed in respect of any loss or damage hereunder for which payment has been made to such mortgagee or creditor it shall to the extent of such payment be subrogated to the rights of the mortgagee or creditor under any securities for the debt held by him; or it may pay the debt in full and require an assignment of the claim or security. No such subrogation shall impair the right of the mortgagee or creditor to recover the full amount of his claim;
- (b) Where the loss (if any) under a policy has, with the consent of the company, been made payable to some person other than the insured, the policy shall not be cancelled or altered by the company to the prejudice of the payee without reasonable notice to him.

10. *Termination of Insurance.*—(1) The insurance may be terminated—

- (a) Subject to the provisions of condition 9, by the company giving to the insured at any time fifteen days' notice of cancellation by registered mail, or five days' notice of cancellation personally delivered, and, if the insurance is on the cash plan, refunding the excess of paid premium beyond the *pro rata* premium for the expired time;
- (b) If on the cash plan, by the insured giving written notice of termination to the company, in which case the company shall upon surrender of this policy, refund the excess of paid premium beyond the customary short rate for the expired time.

(2) Repayment of the excess premium may be made by money, post office order or postal note or by cheque payable at par and certified by a chartered bank doing business in the Province. If the notice is given by registered letter, such repayment shall accompany the notice, and in such case the fifteen days mentioned in clause (a) of this condition shall commence to run from the day following the receipt of the registered letter at the post office to which it is addressed.

11. *Salvage.*—After any loss or damage to insured property, it shall be the duty of the insured, when and as soon as practicable, to secure the insured property from further damage, and to separate as far as reasonably may be the damaged from the undamaged property, and to notify the company of the separation.

12. *Insurance on Goods Moved.*—If any of the insured property is necessarily removed to prevent damage or further damage thereto, that part of the insurance under this

policy which exceeds the amount of the company's liability for any loss already incurred shall for seven days only, or for the unexpired term of less than seven days, cover the property removed, and any property remaining in the original location in the proportions in which the value of the property in the respective locations bears to the value of the property in them all; and the company will contribute *pro rata* towards any loss or expense connected with such act of salvage, according to the respective interests of the parties.

13. *Entry, Control, Abandonment.*—After any loss or damage to insured property, the company shall have an immediate right of access and entry by accredited agents sufficient to enable them to survey and examine the property, and to make an estimate of the loss or damage, and, after the insured has secured the property, a further right of access and entry sufficient to enable them to make an appraisal or particular estimate of the loss or damage, but the company shall not be entitled to the control or possession of the insured property, or the remains or salvage thereof, unless it accepts a part thereof at its agreed value or its value as appraised under condition 17 or undertakes replacement under condition 19, and without the consent of the company there can be no abandonment to it of insured property.

14. *Who to Make Proof.*—Proof of loss must be made by the insured, although the loss is payable to a third person, except that, in case of the absence of the insured or his inability to make the same, proof may be made by his agent, such absence or inability being satisfactorily accounted for, or, in the like case or if the insured refuse to do so, by a person to whom any part of the insurance money is payable.

15. *Requirements After Loss.*—Any person entitled to claim under this policy shall—

- (a) Forthwith after loss give notice in writing to the company;
- (b) Deliver, as soon thereafter as practicable, a particular account of the loss;
- (c) Furnish therewith a statutory declaration declaring:
 - (i) that the account is just and true;
 - (ii) when and how the loss occurred, and if caused by fire, how the fire originated, so far as the declarant knows or believes;
 - (iii) that the loss did not occur through any wilful act or neglect or the procurement, means or connivance of the insured;
 - (iv) the amount of other insurances, and names of other insuring companies;

- (v) all liens and incumbrances on the property insured;
- (vi) the place where the property insured, if movable, was deposited at the time of the fire;
- (d) If required and if practicable, produce books of account, warehouse receipts and stock lists and furnish invoices and other vouchers verified by statutory declaration and furnish a copy of the written portion of any other policy. The evidence furnished under this clause shall not be considered proofs of loss within the meaning of conditions 18 and 19.

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

17. *Arbitration.*—If any difference arises as to the value of the property insured, the property saved, or the amount of the loss, such value and amount and the proportion thereof (if any) to be paid by the insurer shall, whether the right to recover on the policy is disputed or not, and independently of all other questions, be submitted to the arbitration of some person to be chosen by both parties, or if they cannot agree on one person, then to two persons, one to be chosen by the insured and the other by the insurer, and a third to be appointed by the person so chosen, or on their failing to agree, then by a Judge of the District Court of the district in which the loss has happened; and such reference shall be subject to the provisions of *The Arbitration Act*; and the award shall, if the insurer is in other respects liable, be conclusive as to the amount of the loss and the proportion to be paid by the insurer; where the full amount of the claim is awarded the costs shall follow the event; and in other cases all questions of costs shall be in the discretion of the arbitrators.

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

19. *Replacement.*—The company, instead of making payment, may within a reasonable time repair, rebuild or replace the property damaged or lost, giving written notice of its intention so to do within fifteen days after receipt of the proofs of loss.

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

21. *Agency.*—Any officer or agent of the company who assumes on behalf of the company to enter into a written agreement relating to any matter connected with the insurance shall be deemed *prima facie* to be the agent of the company for the purpose.

22. *Waiver.*—No condition of this policy shall be deemed to have been waived by the company, either in whole or in part, unless the waiver is clearly expressed in writing signed by an agent of the company.

23. *Notice.*—Any written notice to the company may be delivered at or sent by registered post to the chief agency or head office of the company in this Province or delivered or sent to any authorized agent of the company therein. 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 company, or, where no address is notified and the address is not known, addressed to him at the post office of the agency, if any, from which the application was received.

24. *Subrogation.*—The company may require from the insured an assignment of all right of recovery against any other party for loss or damage to the extent that payment therefor is made by the company.

No.

FIFTH SESSION
FIFTH LEGISLATURE
15 GEORGE V
1925

BILL

An Act to make Uniform the Law
respecting Policies of Fire Insurance.

Received and read the

First time.....

Second time.....

Third time.....

HON. MR. REID.

EDMONTON:
J. W. JEFFERY, KING'S PRINTER
A.D. 1925