

Bill No. 14 of 1935.

A BILL TO AMEND THE ALBERTA INSURANCE ACT,
1926.

NOTE.

With the exception of section 12, this Bill contains amendments prepared and recommended for adoption by the Association of Superintendents of the Provinces of Canada.

Section 12 makes special provision for the insurance activities of mutual benefit societies under conditions calculated to ensure that such societies will carry on upon a safe basis; and provision is made for societies incorporated under *The Societies Act, 1924*, providing sick, accident and funeral benefits for members under similar conditions.

Section 2 makes amendments to the definitions in the Act, making them uniform with the definitions in the Insurance Acts in the other Provinces.

The amendments made by section 3 provide: (1) for licensing an insurer in respect of more than one class of insurance business; (2) that it is a condition of a license to transact automobile insurance in the Province that the insurer shall not in any action in the Province against the insurer or the insured raise any defence by reason of the policy having been issued outside the Province which could not have been raised if the policy had been issued within the Province; and (3) that insurers licensed for life insurance may be licensed to transact annuity business and disability insurance and double indemnity insurance.

Sections 4 to 11, both inclusive, amend the provisions of the Act relating to automobile insurance.

Section 4 amends the Act so as to provide for special forms of policy, such as garage and sales agency and non-ownership contracts; and also policies insuring a limited or restricted use of the automobile.

II.

Section 5 restates with greater clarity the existing provisions as to the disposition of money payable under a policy.

The effect of the amendment made by section 6 is to restrict the benefit of an owner's policy to the owner of an automobile and persons operating it with his consent: the words struck out might include other risks such as that of an employer of an employee who owns his own car and is insured.

Section 7 relieves the insurer from liability under an owner's policy or a driver's policy for damages for the death of or injury to the insured and to the specified relatives of the insured.

Section 8 amplifies the expression "for bodily injury" to meet a difficulty raised in *Kelly et al v. Constitutional Indemnity Co.* (1933, 3 D.L.R. 50).

By section 9 express provision is made for special endorsements on policies giving extended coverage.

Section 10 is designed to effect clarification.

Section 11 gives an insurer the right to be made a party in any action brought against an insured when the insurer denies liability under the policy.

Section 14 amends the special conditions in an automobile insurance policy: condition 2 is redrawn to obtain greater accuracy: a new provision is inserted giving the insured the right to repair, rebuild or replace damaged property, except where appraisal has been had; and the expression "paid premium" used in condition 11 is defined.

The amendments made by section 13 supply deficiencies in the description of the items for which fees are chargeable as set out in Schedule A of the Act.

R. ANDREW SMITH,
Legislative Counsel.

(This note does not form any part of the Bill and is offered merely as a partial explanation of some of its provisions.)

BILL

No. 14 of 1935.

An Act to amend The Alberta Insurance Act, 1926.

(Assented to _____, 1935.)

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

1. This Act may be cited as "*The Alberta Insurance Act, 1926, Amendment Act, 1935.*"

2. *The Alberta Insurance Act, 1926*, being chapter 31 of the Statutes of Alberta, 1926, is hereby amended as to section 2 thereof—

- (a) by striking out paragraph (a) thereof and by substituting therefor the following:
 - “(a) ‘Accident insurance’ shall mean insurance by which the insurer undertakes, otherwise and incidentally to some other class of insurance defined by or under this Act, to pay insurance money in the event of accident to the person or persons insured, but does not include insurance by which the insurer undertakes to pay insurance money both in the event of death by accident and in the event of death from any other cause”;
- (b) by inserting therein, immediately after paragraph (c) thereof, the following new paragraph:
 - “(c1) ‘Aircraft insurance’ shall mean insurance against loss of or damage to an aircraft and against liability for loss or damage to persons or property caused by an aircraft, or by the operation thereof”;
- (c) by striking out paragraph (e) thereof and by substituting therefor the following:
 - “(e) ‘Automobile insurance’ shall mean insurance against liability for loss or damage to persons or property caused by an automobile or the use or operation thereof, and against loss of or damage to an automobile”;
- (d) by inserting therein, immediately after paragraph (f) thereof, the following new paragraph:
 - “(f1) ‘Boiler and machinery insurance’ shall mean insurance against loss or damage to property and against liability for loss or damage to

persons or property through the explosion, collapse, rupture, or breakdown of, or accident to, boilers or machinery of any kind”;

- (e) by inserting therein, immediately after paragraph (m) thereof, the following new paragraphs:

“(m1) ‘Credit insurance’ shall mean insurance against loss to the insured through the insolvency or default of a person to whom credit is given in respect of goods, wares or merchandise;

“(m2) ‘Disability insurance’ shall mean insurance undertaken by an insurer as part of a life insurance contract whereby the terms of the policy provide for the duration of such insurance for more than one year and for the payment of insurance money or the granting of benefits in the event that the insured becomes disabled as a result of bodily injury or disease”;

- (f) by inserting therein, immediately after paragraph (n) thereof, the following new paragraphs:

“(n1) ‘Double indemnity insurance’ shall mean insurance undertaken by an insurer as part of a life insurance contract whereby the terms of the policy provide for the duration of such insurance for more than one year and for payment only in the event of the death of the insured by accident of an additional amount of insurance money not exceeding the amount payable in the event of death from other causes”;

“(n2) ‘Employers liability insurance’ shall mean insurance (not being insurance incidental to some other class of insurance defined by or under this Act) against loss to an employer through liability for accidental injury to or death of an employee arising out of or in the course of his employment, but does not include workmen’s compensation insurance”;

- (g) by inserting therein, immediately after paragraph (r) thereof, the following new paragraph:

“(r1) ‘Fire insurance’ shall mean insurance (not being insurance incidental to some other class of insurance defined by or under this Act) against loss of or damage to property through fire, lightning or explosion due to ignition”;

- (h) by striking out paragraph (u) thereof and by substituting therefor the following:

“(u) ‘Guarantee insurance’ shall mean the undertaking to perform an agreement or contract or to discharge a trust, duty or obligation upon default of the person liable for such

performance or discharge, or to pay money upon such default or in lieu of such performance or discharge, or where there is loss or damage through such default and includes insurance against loss or liability for loss due to the invalidity of the title to any property or of any instrument or to any defect in such title or instrument, but does not include credit insurance”;

- (i) by striking out paragraph (v) thereof and by substituting therefor the following:
 “(v) ‘Hail insurance’ shall mean insurance against loss of or damage to growing crops caused by hail”;
- (j) by inserting therein, immediately after paragraph (w) thereof, the following new paragraph:
 “(w1) ‘Industrial contract’ shall mean a contract of life insurance for an amount not exceeding two thousand dollars, exclusive of any benefit, surplus, profit, dividend or bonus also payable under the contract, and which provides for payment of premiums at fortnightly or shorter intervals, or, if the premiums are usually collected at the home of the insured, at monthly intervals”;
- (k) by striking out paragraph (y) thereof and by substituting therefor the following:
 “(y) ‘Inland transportation insurance’ shall mean insurance (other than marine insurance) against loss of or damage to property—
 “(i) while in transit or during delay incidental to transit; or
 “(ii) where, in the opinion of the Superintendent, the risk is substantially a transit risk”;
- (l) by striking out paragraph (ee) thereof and by substituting therefor the following:
 “(ee) ‘Life insurance’ shall mean insurance whereby the insurer undertakes to pay insurance money on death, or on the happening of any contingency dependent on human life, or whereby the insurer undertakes to pay insurance money subject to the payment of premiums for a term depending on human life, but, except to the extent of double indemnity insurance, does not include insurance payable in the event of death by accident only”;
- (m) by striking out paragraph (ff) thereof and by substituting therefor the following:
 “(ff) ‘Live stock insurance’ shall mean insurance (not being insurance incidental to some other class of insurance defined by or under this

Act) against loss through the death or sickness of or accident to an animal”;

- (n) by inserting therein, immediately after paragraph (gg) thereof, the following new paragraph:
 “(gg1) ‘Marine insurance’ shall mean insurance against marine losses; that is to say, the losses incident to marine adventure, and may by the express terms of a contract or by usage of trade extend so as to protect the insured against losses on inland waters or by land or air, which are incidental to any sea voyage”;
- (o) by striking out paragraph (ll) thereof and by substituting therefor the following:
 “(ll) ‘Plate glass insurance’ shall mean insurance (not being insurance incidental to some other class of insurance defined by or under this Act) against loss of or damage to plate, sheet or window glass, whether in place or in transit”;
- (p) by inserting therein, immediately after paragraph (oo) thereof, the following new paragraph:
 “(oo1) ‘Property’ includes profits, earnings and other pecuniary interests, and expenditure for rents, interest, taxes and other outgoings and charges and in respect of inability to occupy the insured premises, but only to the extent of express provision in the contract”;
- (q) by striking out paragraph (pp) thereof and by substituting therefor the following:
 “(pp) ‘Property damage insurance’ shall mean insurance against loss of or damage to property which is not included in or incidental to some other class of insurance defined by or under this Act”;
- (r) by inserting therein, immediately after paragraph (qq) thereof, the following new paragraph:
 “(qq1) ‘Public liability insurance’ shall mean insurance against loss or damage to the person or property of others which is not included in or incidental to some other class of insurance defined by or under this Act”;
- (s) by striking out paragraph (ss) thereof and by substituting therefor the following:
 “(ss) ‘Sickness insurance’ shall mean insurance by which the insurer undertakes to pay insurance money in the event of sickness of the person or persons insured, but does not include disability insurance”;
- (t) by striking out paragraph (tt) thereof and by substituting therefor the following:

“(tt) ‘Sprinkler leakage insurance’ shall mean insurance against loss of or damage to property through the breakage or leakage of sprinkler equipment or other fire protection system, or of pumps, water pipes, or plumbing and its fixtures”;

(u) by inserting therein, immediately after paragraph (vv) thereof, the following new paragraph:

“(vv1) ‘Theft insurance’ shall mean insurance against loss or damage through theft, wrongful conversion, burglary, housebreaking, robbery or forgery”;

(v) by striking out paragraph (yy) thereof and by substituting therefor the following:

“(yy) ‘Weather insurance’ shall mean insurance against loss or damage through windstorm, cyclone, tornado, rain, hail, flood, or frost, but does not include hail insurance”; and

(w) by inserting therein, immediately after paragraph (yy) thereof, the following new paragraph:

“(yy1) ‘Workmen’s compensation insurance’ shall mean insurance of an employer against the cost of compensation prescribed by statute for bodily injury, disability, or death of a workman through accident or disease arising out of or in the course of his employment.”

3. The said Act is further amended as to section 31 thereof by adding at the end thereof the following new subsections:

“(3) Subject to provisions of parts of this Act particularly related to classes of insurers mentioned in section 29, a license may be granted to an insurer to carry on any one or more of the classes of insurance defined in section 2 of this Act and such other classes as may be prescribed by order in council.

“(4) It shall be a condition of a license to carry on automobile insurance in Alberta, for breach of which such license may be cancelled, that in any action or proceeding in the Province against a licensed insurer, or its insured, arising out of a motor vehicle accident in the Province such insurer shall appear and shall not set up any defence to a claim under a policy issued outside the Province which might not be set up if such policy were issued in the Province, in accordance with the law of the Province relating to motor vehicle liability policies.

“(5) Every insurer licensed for the transaction of life insurance may, under the authority of its license, unless the license expressly provides otherwise, issue annuities and endowments of all kinds and also include in any policy of life insurance in respect of the same life or lives insured thereby disability insurance and double indemnity insurance.

“(6) Where a question arises as to the class of insurance into which any specific contract of insurance or form of policy falls, the Superintendent may determine the question and his determination shall be effective and final for the purposes of this Act.”

4. The said Act is further amended as to section 251 thereof by striking out the same and by substituting therefor the following:

“**251.**—(1) Subject to the provisions of subsections (2) and (3) of this section and sections 252 and 259j—

“(a) the conditions set forth in this section shall be statutory conditions and deemed to be part of every contract of automobile insurance and shall be printed on every policy with the heading ‘Statutory Conditions’;

“(b) no variation or omission of a statutory condition shall be valid nor shall anything contained in any addition to a statutory condition or in the description of the subject matter of the insurance be effective in so far as it is inconsistent with, varies or avoids any such condition.

“(2) Where the automobile insurance is neither insurance under a motor vehicle liability policy nor insurance against loss of or damage to an automobile designated in the policy, the Superintendent may prescribe appropriate conditions or may omit, vary or add to the statutory conditions.

“(3) The Superintendent may approve a form of motor vehicle liability policy appropriate to insure a limited or restricted use of the automobile and in that case the statutory conditions shall be deemed to be amended so far as is necessary to give effect to the terms and conditions of the policy so approved and the provisions of sections 259a and 259b shall not apply.”

5. The said Act is further amended as to section 257 thereof by striking out the same and by substituting therefor the following:

“**257.**—(1) The insurer, upon making any payment or assuming liability therefor under a contract of automobile insurance, shall be subrogated to all rights of recovery of the insured against any person and may bring action in the name of the insured to enforce such rights.

“(2) If the net amount recovered, after deducting the costs of such recovery, is not sufficient to provide a complete indemnity for the loss or damage suffered, such amount shall be divided between the insurer and the insured in the proportions in which such loss or damage has been borne by them respectively.”

6. The said Act is further amended as to section 259a thereof by striking out the words “or is responsible for the use of,” where the same occur in subsection (1) thereof.

7. The said Act is further amended as to section 259*d* thereof by striking out paragraph (b) thereof and by substituting therefor the following:

“(b) for loss or damage resulting from bodily injury to or the death of the insured or the son, daughter, wife, husband, mother, father, brother or sister of the insured; or”.

8. The said Act is further amended as to section 259*e* thereof by striking out the words “for bodily injury,” where the same occur therein, and by substituting therefor the words “against loss or damage resulting from bodily injury.”

9. The said Act is further amended as to section 259*f* thereof—

(a) by striking out the words “and in statutory condition 3,” where the same occur in paragraph (a) thereof; and

(b) by striking out the words “in the following respects,” where the same occur therein, and by substituting therefor the words “in whole or in part in any or all of the following respects.”

10. The said Act is further amended as to section 259*h* thereof by striking out the words “such excess coverage,” where the same occur in subsection (5) thereof, and by substituting therefor the words “such excess coverage or extended coverage.”

11. The said Act is further amended as to section 259*h* thereof by adding thereto the following new subsection:

“(7) Where an insurer denies liability under a motor vehicle liability policy it shall have the right upon application to the court to be made a third party in any action to which the insured is a party and in which a claim is made by any party to the action for which it is or might be asserted indemnity is provided by the said policy.”

12. The said Act is further amended as to section 421 thereof by adding thereto the following new subsections:

“(2) No mutual benefit society shall exercise any of its powers of providing any benefits to its members in the nature of insurance at any time during which it is not licensed so to do under this Act.

“(3) No society incorporated under *The Societies Act, 1924*, shall commence to exercise any of its powers of providing any sick, accident or funeral benefits for its members unless the by-law of the society proposed for that purpose has been approved by the Superintendent of Insurance and no such society shall provide any sick, accident or funeral benefit for any of its members at any time during which it is not licensed so to do under this Act.

“(4) No by-law of a society shall be approved and no mutual benefit or other society shall be licensed unless there

has been filed with the Superintendent the certificate of any actuary which satisfies him that the society's plan of insurance is sound, and that the reserve maintained or to be maintained, together with the payments to be received from the members, is or will be sufficient to provide for the payment at maturity of the contracts made or to be made by the society without deduction or abatement.

"(5) Every licensed society shall file with its annual return under section 84 a valuation of its contracts in force at the last preceding thirty-first day of December, and the valuation shall be made by an actuary, and shall be certified by him to be correct and shall have regard to the prospective liabilities of the society under its contracts and to the payments to be thereafter received under the contracts according to the scale in force at the date of the valuation."

13. The said Act is further amended as to Schedule A thereto—

- (a) by striking out the word "property," where the same occurs in clause (iv) of paragraph (c) of that part of the schedule relating to Joint Stock Companies; and
- (b) by striking out the words "explosion and live stock insurance," where the same occur in clause (v) of paragraph (c) of the said part, and by substituting therefor the words "explosion, liability and live stock insurance"; and
- (c) by striking out the words "including sickness," where the same occur in clause (i) of paragraph (c) of that part of the schedule relating to Mutual Benefit and Fraternal Societies, and by substituting therefor the words "including accident, sickness."

14. The said Act is further amended as to Schedule D thereof—

- (a) by striking out statutory condition 2 thereof and by substituting therefor the following:
 - "2.—(1) The insured shall not use or drive the automobile—
 - “(a) whilst under the influence of intoxicating liquor or drugs to such an extent as to be for the time being incapable of the proper control of the automobile; or
 - “(b) whilst he is not for the time being qualified and authorized by law to drive or operate the automobile or, in case the law does not prescribe any qualification or authority whilst under the age of sixteen years; or
 - “(c) for any illicit or prohibited trade or transportation; or
 - “(d) in any race or speed test”;
 - “(2) The insured shall not permit, suffer, allow or connive at the use of the automobile—

- “(a) by any person under the influence of intoxicating liquor or drugs to such an extent as to be for the time being incapable of the proper control of the automobile; or
 - “(b) by any person who is not for the time being qualified and authorized by law to drive or operate the automobile or, in case the law does not prescribe any qualification or authority by any person under the age of sixteen years; or
 - “(c) for any illicit or prohibited trade or transportation; or
 - “(d) in any race or speed test”;
- (b) by adding to Statutory Condition 5 thereof the following new subsection:
- “(3a) Except where an appraisal has been had, 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 its intention so to do within seven days after the receipt of the proofs of loss; but there can be no abandonment of the automobile to the insurer without its consent; in the event of the insurer exercising such option, the salvage, if any, shall revert to it”;
- (c) by adding to Statutory Condition 11 thereof the following new subsection:
- “(3) In this condition the expression ‘paid premium’ means premium actually paid by the insured to the insurer or its agent, and does not include any premium or part thereof paid to the insurer by an agent unless actually paid to the agent by the insured.”

15. This Act, or such part or parts thereof as may be designated in any Proclamation of the Lieutenant Governor in Council, shall come into force upon such day or days as may be from time to time fixed by Proclamation of the Lieutenant Governor in Council.

No. 14.

FIFTH SESSION
SEVENTH LEGISLATURE
25 GEORGE V
1935

BILL

An Act to amend The Alberta Insurance Act, 1926.

Received and read the

First time.....

Second time.....

Third time.....

HON. MR. LOVE

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