

Bill No. 46 of 1941.

A BILL TO AMEND THE ALBERTA INSURANCE ACT.

NOTE.

This Bill amends *The Alberta Insurance Act*.

Section 2 is a necessary change due to the introduction of the new Part re hail insurance. It also amends the Act to include a new definition which was thought desirable, the wording of which is similar to that in other Provinces.

Section 3 corrects a misprint in the original Act.

Section 4 extends the scope of a first insurance license to include certain incidental hazards which are now commonly added to fire insurance policies by endorsement.

Section 5 strikes out subsection (2) of section 186 which has been rendered unnecessary by the addition of the new section 30a.

The amendment introduced to section 187 (1) has the effect of extending the provision limiting the term of fire insurance policies in the case of mercantile and manufacturing risks from one year to three years.

Section 7 provides further protection for the public by requiring any special stipulations inserted in a fire insurance policy to be included in the written application for the policy signed by the insured.

Section 8 removes any doubt as to the enforceability of a claim for life insurance money in the event of the suicide of the assured.

Section 9 makes it clear that an accident or sickness contract may be renewed by a renewal receipt.

Section 10 amends section 269 by substituting the words "transportation corporation" for "railway corporation" thereby permitting bus and air transportation companies to issue such ticket policies.

The new Part dealing with hail insurance introduced by section 11 is the result of recommendations made by a conference in Regina in 1938. Hail insurance has hereby been extended to cover field, garden and horticultural garden crops. By special endorsement, coverage may also be extended to swathed crops, and to provide protection against loss from other causes. This legislation has been passed in Manitoba and Saskatchewan where it has been

in force for two seasons and has been working very satisfactorily.

Section 13 extends the definition of "actuary" to include a Fellow of the American Institute of Actuaries, a now well recognized society.

Section 14 includes the new statutory conditions pertaining to hail insurance rendered necessary by the introduction of the new Part.

W. S. GRAY,
Acting Legislative Counsel.

(This note does not form any part of the Bill but is offered in explanation of its provisions.)

BILL

No. 46 of 1941.

An Act to amend The Alberta Insurance Act, 1926.

(Assented to _____, 1941.)

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, 1941.*"

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

(a) by striking out the word "growing" where the same occurs in the second line of paragraph (v) thereof; and

(b) by adding after paragraph (z) the following new paragraph:

"(z1) Insurance on the cash plan means any insurance which is not mutual insurance."

3. The said Act is further amended by striking out paragraph (g) of section 29 and by substituting therefor the following paragraph:

"(g) underwriters or syndicates of underwriters operating on the plan known as Lloyd's."

4. The said Act is further amended by inserting therein immediately after section 30 the following new section:

"**30a.** Every insurer licensed for the transaction of fire insurance may, subject to the provisions of its Act of Incorporation and the restrictions prescribed by the license, insure the same risk against loss or damage from falling aircraft, earthquake, tornado, hail, sprinkler leakage, limited or inherent explosion, civil commotion, and impact by vehicles and such other classes of insurance as may be prescribed by the regulations."

5. The said Act is further amended as to section 186 by striking out subsection (2) thereof.

6. The said Act is further amended as to section 187 by striking out subsection (1) thereof and by substituting therefor the following:

“187.—(1) No contract shall be made for a term exceeding three years, but any contract may be renewed from time to time for a further period not exceeding three years by the delivery of a renewal receipt identifying the policy by number, date or otherwise, or by a new premium note.”

7. The said Act is further amended as to section 191 by adding at the end of paragraph (d) of subsection (1) thereof the following: “but no such stipulation or agreement shall be binding upon the insured unless it is clearly set forth in a written application for the insurance signed by the applicant.”

8. The said Act is further amended by inserting therein immediately after section 238 the following new section:

“238a. An agreement, express or implied, contained in a contract of life insurance for the payment of insurance money in the event that the insured commits suicide shall be lawful and enforceable.”

9. The said Act is further amended by inserting therein immediately after section 266 the following new section:

“266a. A contract may be renewed by the delivery of a renewal receipt identifying the policy by number, date or otherwise.”

10. The said Act is further amended as to section 269 by striking out the same and by substituting therefor the following:

“269. Where a policy of accident insurance is issued in the form of a ticket through the agency of a transportation corporation, the statutory conditions set out in Schedule E to this Act need not be printed on the ticket if such policy contains the following notice printed in conspicuous type: ‘This policy is subject to the statutory conditions respecting contracts of accident insurance.’”

11. The said Act is further amended as to Part X by striking out the same and by substituting therefor the following:

“PART X

“HAIL INSURANCE

“283.—(1) This Part shall apply to hail insurance and to every insurer carrying on the business of hail insurance in the Province except the Hail Insurance Board of Alberta.

“(2) For the purposes of this Part the expression premium as defined in paragraph (m) of section 2 includes a negotiable instrument accepted by the insurer or its general agent as payment of the premium.

"284.—(1) Every insurer may, within the limits and subject to the restrictions prescribed by its license, insure or re-insure,—

"(a) crops of wheat, oats, barley, flax, rye or speltz, field peas, buckwheat, grasses or clover grown for seed, field corn or sunflower grown for seed or fodder; or

"(b) field or garden or horticultural crops other than those specified in paragraph (a).

"(2) In the case of the crops mentioned in paragraph (b) of subsection (1) the superintendent may approve a form of contract appropriate to insure such crops and in that event the statutory conditions shall be read with such modification as is necessary to give effect to the terms and conditions of a contract in the form so approved.

"(3) The insurer may by an endorsement on the policy, and in consideration of an additional premium, insure the crop,—

"(a) for any period during which it is lying in wind-rows; or

"(b) for any period during which it is in sheaves either on the ground or in stooks.

"(4) The insurer may by an endorsement on the policy, and in consideration of an additional premium, insure the crop against loss or damage arising from other losses incidental to crops and in such case the statutory conditions shall be read with such modification as is necessary to give effect to the terms and conditions of the endorsement.

"285.—(1) The contract shall be void if, at the time at which it would otherwise take effect, the insured has not an insurable interest in the crop insured.

"(2) If the insured has an insurable interest in the crop insured when the contract takes effect, it shall not be 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.

"286.—(1) No insurer shall effect a contract of insurance unless such insurer has been tendered an application therefor in writing signed by the applicant or his agent.

"(2) A copy of the application or of such part thereof as is material to the contract shall be embodied in, endorsed upon or attached to the policy when issued by the insurer, and shall form part thereof.

"(3) The application shall set forth,—

"(a) the name and address of the applicant;

"(b) an itemized description of the location and acreage of each part of the crop to be insured and the amount of insurance applied for on each acre;

- “(c) whether or not the crop has been hailed prior to the time of the application;
- “(d) the insurable interest of the applicant;
- “(e) the name of the person or persons to whom the insurance money is payable; and
- “(f) with the approval of the Superintendent, such further information as the insurer requires.

“**287.**—(1) On the face of every policy there shall appear the name of the insurer, 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 maximum amount or amounts which the insurer contracts to pay, the date of the commencement of liability, the event on the happening of which payment is to be made and the term of the contract.

“(2) There shall also 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.

“**288.** Every agent who takes an application on behalf of an insurer shall deliver it to the insurer, or forward it to the insurer by mail, not later than the day following the day on which it is taken.

“**289.**—(1) If an agent of an insurer mails an application for insurance on crops mentioned in paragraph (a) of subsection (1) of section 284 to the head or branch office or the general agency of the insurer in the Province and tenders therewith payment of the premium in cash, or by post office order, postal note, express order, bank money order, certificate of deposit of a chartered bank or certified cheque, a contract of insurance in accordance with the application shall take effect at noon, standard time, of the day following the date of such mailing. In such case, the post office date stamp shall determine the date of mailing.

“(2) The insurer may decline the application on its receipt. If the application is declined the insurer shall forthwith give notice thereof by registered letter, or by prepaid telegram if possible, to the applicant at his address as given in the application and to the agent tendering the application, in which case the contract of insurance mentioned in subsection (1) shall continue in force only until noon of the day following the receipt of the notice by the applicant. Notwithstanding the foregoing provision, notice in writing that the application has been declined may be personally delivered to the applicant by the agent, and in that event the contract of insurance mentioned in subsection (1) shall continue in force only until noon of the day following receipt of the notice by the applicant.

“(3) The premium tendered with the application shall be returned to the applicant or held by the insurer for the

applicant for premium purposes solely and payable on the direction of the applicant to any insurer to whom an application for insurance is subsequently tendered.

"(4) If the applicant subsequently tenders an application for insurance to another insurer, and endorses on the application a notice that the premium is held as mentioned in subsection (3), then the amount so held shall, for the purpose of this section, be deemed to have been tendered with the application.

"**290.** If the amount of premium tendered with an application made in accordance with the provisions of section 289 is not the correct amount, the insurance shall, unless readjusted before loss occurs, be either reduced or increased to such amount as the premium actually tendered would pay for according to the correct rate of premium applicable to the risk.

"**291.**—(1) If an agent of an insurer tenders an application, with payment of the premium otherwise than as specified in section 289, or if the applicant tenders his application and payment of the premium, to the head or branch office or the general agency of the insurer in the Province, the application shall immediately be stamped with the date of its receipt.

"(2) Subject to subsection (3), the application shall be accepted or declined not later than the day following the date of its receipt and shall be so stamped.

"(3) In case the applicant tenders with his application an order on a third party as payment of the premium, the application shall be accepted or declined on the day following the date of receipt from the third party of notice of acceptance or of refusal to accept the order for payment.

"(4) If accepted, the insurance applied for shall take effect at noon, standard time, of the day on which the application is accepted.

"(5) If declined, the applicant shall be so notified on the day on which the application is declined, at his address as given in the application. Where there is a telegraph office at such address, the notice shall be given by telegram prepaid, otherwise it shall be forwarded in writing by registered letter.

"(6) If the insurer does not so notify the applicant that his application has been declined the insurer shall be conclusively presumed to have accepted the application.

"**292.** A policy issued to an insured upon an application in writing shall be deemed to be in accordance therewith, unless the insurer forthwith gives notice to the insured in writing of the particulars wherein the policy and application differ.

"**293.**—(1) Subject to subsection (2) all policies of hail insurance shall expire at noon on the fifteenth day of September in the year in which they are made.

"(2) If any portion of the insured crop is cut before that date the liability of the insurer shall cease in respect of that portion when it is cut, and the insurance on each acre of the remaining acreage shall continue until the crop thereon is cut but not beyond the said date unless extended pursuant to subsection (3).

"(3) The insurer may, by an endorsement on the policy, in consideration of an additional premium, extend the term of the contract beyond the said date.

"294.—(1) A policy may contain a partial payment of loss clause to the effect that the insurer shall pay only an agreed proportion of any loss which may be 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 shall be printed or stamped upon the face of the policy in conspicuous type in red ink, the words: This policy contains a partial payment of loss clause.

"(2) Such partial payment of loss clause shall not be deemed a variation of or addition to the statutory conditions.

"295.—(1) Every insurer shall, before the first day of May in each year, file with the Superintendent the rates of premium to be charged in designated areas in the Province and such rates shall be effective during the current calendar year unless changed in the meantime and the change is notified to the Superintendent at least ten days before becoming effective.

"(2) Where a rate has been reduced after notification the new rate shall be applicable to all contracts issued by the insurer within such designated areas; and the insurer shall return to each insured within such designated areas the amount by which the premium paid by each insured exceeds the premium at the lower rate.

"296.—(1) Every insurer shall, before the first day of May in each year, file with the Superintendent the rate of commission payable to its agents in respect of its contracts issued during the current year.

"(2) No insurer or its general agent for the Province shall, directly or indirectly, pay or allow or offer or agree to pay or allow any compensation or anything of value to any person for acting or attempting or assuming to act as its agent in excess of that offered, paid or allowed to any one of its agents on risks for which like rates of premium are payable.

"(3) If on investigation by the Superintendent an insurer or its general agent for the Province is found to have contravened the provisions of subsection (2), the same rate of commission shall be paid to all agents on risks for which such like rates of premium are charged.

"297. Where the loss has, with the consent of the insurer, been made payable to some person other than the

insured, the contract shall not be cancelled or altered to the prejudice of such person without reasonable notice to him by the insurer.

"298. When an adjustment of loss under a contract has been made, a copy of the adjustment, duly signed by the adjuster and the insured or his agent, shall be given to the insured or his agent.

"299.—(1) If the actual acreage of the crop insured under any item of the policy is found to be less than the acreage mentioned in the application under such item, the insurer shall repay to the insured the premium paid on the excess acreage.

"(2) If the actual acreage of the crop insured under any item of the policy is found to be greater than the acreage mentioned in the application, the amount of insurance on each acre shall be reduced *pro rata* in its relation to the actual acreage, unless the acreage insured is clearly identified in the application or by a diagram on the application.

"299a. The conditions set forth in Schedule F to this Act 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, and no stipulations to the contrary, or provisions for a variation, addition or omission, shall be binding on the insured, nor shall anything contained in the description of the subject matter of the insurance be effective in so far as it is inconsistent with, varies, modifies or avoids any such condition.

"299b. In any case where there has been imperfect compliance with a statutory condition as to proof of loss to be given by the insured after the occurrence of the loss insured against, 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."

12. The said Act is further amended as to section 300 by adding at the end thereof the following words: "but shall not apply to weather insurance provided by an endorsement to a contract of fire insurance."

13. The said Act is further amended as to section 376 by striking out the words "the Actuarial Society of America", where the same occur in paragraph (a) thereof, and by substituting therefor the words "the Actuarial Society of America or of the American Institute of Actuaries".

14. The said Act is further amended as to Schedule F by striking out the same and by substituting therefore the following:

“STATUTORY CONDITIONS

“1. Where an applicant in his application falsely describes the location and acreage of the crop, to the prejudice of the insurer, or knowingly misrepresents or fails to disclose in the application any fact required to be stated therein, the insurance shall be void as to the item of the application in respect of which the misdescription, misrepresentation or omission is made.

“2. No term or condition of the policy shall be 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 at its head or branch office or general agency from which the policy was issued.

“3. Any officer or general 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 shall be deemed, *prima facie*, to be the agent of the insurer for the purpose.

“4. No claimant shall be entitled to indemnity under the policy for any loss or damage which is found to be less than five per cent of the crop upon the hailed acreage or any portion thereof and in no case for less than ten dollars, except where the acreage insured is forty acres or less.

“5. No claimant shall be entitled to indemnity under the policy,—

“(a) when the crop is wholly destroyed by any agency other than hail; or

“(b) when the crop is overripe; or

“(c) when the crop or any portion thereof has been so injured by causes other than hail that the crop or such portion, as the case may be, would not yield profit over and above the actual cost of cutting, threshing and marketing it.

“6. Any person claiming under the policy shall give notice of claim in writing to the head or branch office or the general agency of the insurer from which the policy was issued within three 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 hailed area; provided that failure to give notice within such time shall, subject to condition 9, not invalidate the claim if it is shown that it was not reasonably possible to give notice within such time and that notice was given as soon as was reasonably possible.

“7. After any loss or damage to the insured crop, the insurer shall have 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.

“8. Within thirty days after the receipt of notice of loss or damage the insurer and the insured or their accredited

representatives shall together ascertain and agree upon the percentage of loss or damage sustained on the acreage of the crop or any portion thereof insured under any item of the policy. The amount of indemnity shall be ascertained on the agreed percentage of the insurance on each acre of acreage 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 appraisal as hereinafter provided. No account shall be taken of the cost of cutting or threshing the portion not destroyed or damaged. The determination of the percentage of loss or damage may be deferred to a later date agreed upon by the insurer and the insured.

"9. A person making a claim under the policy shall, within thirty days after the occurrence of a loss or within thirty days of the deferred adjustment date, unless such time is extended in writing by the insurer, furnish a statutory declaration, hereinafter called proof of loss, on a form furnished by the insurer, setting forth the date and number of the policy, the date of the occurrence of the loss or damage, the location and acreage of the crop damaged, the estimated percentage of loss or damage sustained on the acreage of the crop or any portion thereof insured under any item of the policy and whether the crop was damaged by hail prior to the time of the application. If the claimant fails to furnish proof of loss he shall forfeit any claim under the policy:

"Provided that if the insurer, within the said thirty days or at the time of the deferred adjustment, has ascertained the loss acceptable to the claimant or if the amount of loss has been determined by appraisal as hereinafter provided, the insurer shall be deemed to have waived proof of loss, unless proof of loss is requested by the insurer in writing.

"10. 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 refuses to do so, by a person to whom any part of the insurance money is payable.

"11. Any fraud or wilfully false statement in a proof of loss shall vitiate the claim of the person making such proof of loss.

"12. The insurer shall pay the insurance money for which it is liable under the policy within sixty days after the proof of loss has been received by it or where an appraisal is had under condition 15, within thirty days after the award is rendered by the appraisers.

"13. If the insured claims for loss or damage under the policy and it is found that he is not entitled to indemnity under the conditions of the policy, the insured shall be liable for the expenses incurred in the adjustment of his claim.

"14. A policy may be cancelled at any time by the insured named therein by giving written notice to that effect to the head or branch office or the general agency of the insurer from which the policy was issued 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. If a note or other undertaking was accepted as payment of the premium the insured shall pay the insurer the earned portion of the premium and on payment or tender of such amount the insurer shall return such note or undertaking to pay, or if the insured does not pay or tender the amount, the insurer shall endorse on the note or other undertaking a credit of the amount of the unearned portion of the premium.

"15. In the event of a disagreement as to the percentage of damage by hail to any of the crops insured, whether the right to recover on the policy is disputed or not, such percentage shall, when so required by either party, be ascertained by an appraisal which shall be conducted as follows:

- "(i) the party desiring appraisal shall within three days of such disagreement deliver or cause to be delivered by mail or otherwise to the other party a notice in writing requiring an appraisal to be made and appointing an appraiser who is a taxpayer in the Province, who shall act either alone or with an appraiser chosen by the other party to estimate the percentage of the damage;
- "(ii) not later than three days after receipt of such notice the other party shall, if he so desires, appoint an appraiser to represent him and, within the said period, shall notify the first party of such appointment by notice in writing delivered by mail or otherwise;
- "(iii) in the latter case the appraisers shall together estimate the percentage of damage and failing to agree shall submit their differences to an umpire, and the award in writing of any two shall determine the percentage of the damage. Such umpire shall be chosen by the appraisers, or in case they cannot agree, then on the application of either appraiser, by the Superintendent of Insurance;
- "(iv) If only one appraiser has been chosen, both parties shall share equally his expenses; if two, each party shall pay the expense of the appraiser chosen by him; both parties shall bear equally the expense of the umpire if an umpire is required;
- "(v) should either party after receipt of written notice from the other, neglect or refuse to choose an appraiser within the time above specified the percentage of damage shall be estimated and determined by the appraiser chosen by the party giving notice;

“(vi) the actual appraisal of such damage shall be commenced within two days after both appraisers have been chosen, or after the expiration of the time herein allowed for such choice;

“(vii) the periods of time specified in this condition may on application be extended at the discretion of the Superintendent of Insurance.

“16. Every action or proceeding against the insurer in respect of loss or damage to the crops insured under the policy shall be commenced within one year next after the occurrence of the loss or damage and not afterwards.

“17. If the crop insured or the interest of the insured in such crop is assigned without the written permission of the head or branch office or general agency of the insurer from which the policy was issued, such assignment shall not be binding on the insurer; but this condition does not apply to change of title by succession or by operation of the law, or by reason of death.”

15. This Act shall come into force on the day upon which it is assented to.

No. 46.

FIRST SESSION
NINTH LEGISLATURE
5 GEORGE VI
1941

BILL

An Act to amend The Alberta
Insurance Act.

Received and read the

First time.....

Second time.....

Third time.....

HON. MR. MANNING.

EDMONTON:
A. Sholtka, King's Printer
1941